

CHAPTER 1

FINANCIAL INSTITUTIONS

Article 1

Provisions Applicable to Department

of Banking and Finance and

Financial Institutions

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ARTICLE 1

PROVISIONS APPLICABLE TO DEPARTMENT OF BANKING AND FINANCE AND FINANCIAL INSTITUTIONS GENERALLY

7-1-1. Short title.

This chapter shall be known and may be cited as the "Financial Institutions Code of Georgia" (hereinafter called "this chapter").

(Code 1933, 41A-101, enacted by Ga. L. 1974, p. 705, 1.)

7-1-2. Legislative findings.

The General Assembly finds and declares that the sound, efficient, and responsive operation of financial institutions is essential to the livelihood of the people of this state and to the stability and growth of the economy of this state and region and vitally affects the public interest.

(Code 1933, 41A-103, enacted by Ga. L. 1974, p. 705, 1.)

7-1-3. Objectives of chapter; standards for construction and regulation.

(a) The underlying objectives of this chapter are to provide for:

- (1) Safe and sound operation of financial institutions;
 - (2) Proper conservation of the assets of financial institutions;
 - (3) Public confidence in financial institutions;
 - (4) Protection for the interests of the depositors, creditors, and shareholders of financial institutions;
 - (5) Service by financial institutions responsive to the needs and convenience of depositors, borrowers, and other customers and conducive to economic progress and, to these ends, opportunities to expand services and facilities;
 - (6) Appropriate competition among financial institutions and between them and other financial organizations including those organized under the laws of the United States, other states, and foreign countries;
 - (7) Delegation to the department of rule-making power and administrative discretion in order that supervision of financial institutions may be flexible and responsive to changes in economic conditions and banking, fiduciary, and other commercial practices;
 - (8) Opportunity for management of financial institutions to exercise their business judgment;
 - (9) Simplification and modernization of the law governing banking, trust, and other financial institutions; and
 - (10) As to other entities under the supervision of the department that are not financial institutions, including check cashers and mortgage lenders and brokers, to provide for:
 - (A) Supervision and examination of their business affairs to ensure that they operate in a manner consistent with state law;
 - (B) Protection of the interests of consumers and service by these entities which is responsive to their consumers; and
 - (C) Simplification and modernization of the law that governs these entities, together with the delegation of rulemaking power and administrative discretion to the department to carry out its responsibilities, keeping in mind the need for economic and technological progress in the industry.
- (b) This chapter shall be construed and applied to promote the foregoing objectives and they shall constitute standards to be observed by the department in promulgating rules and regulations, issuing cease and desist orders, conducting examinations, and exercising discretionary powers and in connection with all other matters embraced by this chapter.

(Code 1933, 41A-104, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1997, p. 485, 1; Ga. L. 2002, p. 1220, 1.)

7-1-4. Definitions.

Subject to additional definitions contained in the subsequent provisions of this chapter, as used in this chapter, the term:

(1) "Affiliate" means any corporation, business trust, association, or other similar organization:

(A) Of which a financial institution, directly or indirectly, owns or controls either a majority of the voting shares or more than 50 percent of the number of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions;

(B) Of which control is held, directly or indirectly, through stock ownership or in any other manner by the shareholders of a financial institution who own or control either a majority of the shares of such financial institution or more than 50 percent of the number of shares voted for the election of directors of such financial institution at the preceding election or by trustees for the benefit of the shareholders of any such financial institutions;

(C) Of which a majority of its directors, trustees, or other persons exercising similar functions are directors of any one financial institution; or

(D) Which owns or controls, directly or indirectly, either a majority of the shares of a financial institution or more than 50 percent of the number of shares of a financial institution voted for the election of directors of a financial institution at the preceding election or controls in any manner the election of a majority of the directors of a financial institution or for the benefit of whose shareholders or members all or substantially all the capital stock of a financial institution is held by trustees.

(1.5) "Agency relationship" is a relationship created by a contractual agreement whereby a financial institution agrees with a third party, including another financial institution, to act in a principal or agent capacity to facilitate the conduct of activities related to the business of banking, which activities are currently authorized under this chapter or under other applicable law.

(2) "Agreement for the payment of money" means a consensual monetary obligation not in the form of an evidence of indebtedness or an investment security and includes an account or general intangible as defined in Code [Section 11-9-102](#).

(3) "Appropriated retained earnings" means that portion of the retained earnings of a bank or trust company set aside by resolution of the board of directors as unavailable for the payment of dividends or other distribution to shareholders.

(4) "Articles" means original or restated articles of incorporation or articles of consolidation and all the amendments thereto, including articles of merger or conversion, and also includes what heretofore have been designated by law as certificates of incorporation or charters and, in case of foreign corporations, whatever documents are equivalent to "articles" in their jurisdiction of incorporation. After an amendment restating articles in their entirety, the "articles" shall not include any prior documents, and the certificate of amendment issued by the Secretary of State shall so state.

(5) "Assets" means all the property and rights of every kind of a financial institution.

(6) "Attorney" means an attorney at law who is regularly retained as counsel for a financial institution or who is a partner or associate of a firm which is regularly retained as counsel for a financial institution.

(7) "Bank" means a corporation existing under the laws of this state on April 1, 1975, or organized under this chapter and authorized to engage in the business of receiving deposits withdrawable on demand or deposits withdrawable after stated notice or lapse of time; "bank" shall also include national banks located in this state for the purpose of Part 6 of Article 2 of this chapter, relating to deposits, safe-deposit agreements, and money received for transmission, and Article 8 of this chapter, relating to multiple deposit accounts; provided, however, that "bank" shall not include a credit union, a building and loan association, a savings and loan association, or a licensee under Article 4 of this chapter. "Bank" shall include a federal or state credit union for the purposes of Part 6 of Article 2 of this chapter, provided that this inclusion is not intended to grant or expand any powers to credit unions not authorized in Part 6 of Article 2 of this chapter or by other law.

(8) "Building and loan association" means such an association as defined in paragraph (1) of subsection (a) and subsections (b) and (c) of Code [Section 7-1-770](#).

(9) "Capital debt" means the sum of the face value of the subordinated securities of a financial institution issued pursuant to Code [Section 7-1-419](#).

(10) "Capital stock" means the sum of the par value of the authorized shares which have been issued and remain outstanding of a bank or trust company.

(11) Reserved.

(12) "Commercial bank" means a bank authorized to hold deposits subject to check.

(13) "Commissioner" means the commissioner of banking and finance.

(14) "Corporation" means a corporation, whether profit or nonprofit, and includes a professional corporation or joint-stock association, organized under the laws of this state, the United States, or any other state, territory, or dependency of the United States or under the laws of a foreign country.

(15) "Credit union" means a cooperative society incorporated under the laws of this state on April 1, 1975, or organized under Article 3 of this chapter and existing for the twofold purpose of promoting thrift among its members and creating a source of credit for them at reasonable rates.

(16) "Department" means the Department of Banking and Finance.

(17) "Depositor" means any person or corporation who shall deposit money or items for the payment of money in any financial institution, which funds are subsequently (allowing time for collections) withdrawable either on demand or after a stated notice or lapse of time, whether interest is allowed thereon or not, and shall also include:

(A) Holders of demand and time certificates of deposit;

(B) Owners of certified or cashiers' checks and checks purchased from a licensee under Article 4 of this chapter; and

(C) Shareholders in credit unions, federal credit unions, building and loan associations, and savings and loan associations to the extent that funds paid in by them are withdrawable within the terms of this definition.

(18) "Evidence of indebtedness" means a note, draft, or similar negotiable or nonnegotiable instrument.

(19) "Federal credit union" means an association organized pursuant to the Federal Credit Union Act, 12 U.S.C. Sections 1750-1795i.

(20) "Fiduciary" means an executor, administrator, guardian, receiver, trustee, assignee for benefit of creditors, or one acting in a similar capacity.

(21) "Financial institution" means:

(A) A bank;

(B) A trust company;

(C) A building and loan association;

(D) A credit union;

(E) A corporation licensed to engage in the business of selling checks in this state on April 1, 1975, or so licensed pursuant to Article 4 of this chapter;

(F) Business development corporations existing on April 1, 1975, pursuant to the former "Georgia Business Development Corporation Act of 1972," approved April 3, 1972 (Ga. L. 1972, p. 798), or organized pursuant to Article 6 of this chapter;

(G) An international bank agency doing business in this state on April 1, 1975, pursuant to the former "International Bank Agency Act," approved April 6, 1972 (Ga. L. 1972, p. 1140), or authorized to do business in this state pursuant to Article 5 of this chapter;

(H) In addition, as the context requires, a national bank, savings and loan association, or federal credit union for the purpose of the following provisions:

- (i) Code [Section 7-1-2](#), relating to findings of the General Assembly;
 - (ii) Code [Section 7-1-3](#), relating to objectives of this chapter;
 - (iii) Code [Section 7-1-8](#), relating to supplementary principles of law;
 - (iv) Code [Section 7-1-37](#), relating to restrictions on officials and personnel;
 - (v) Code [Section 7-1-70](#), relating to disclosure of information;
 - (vi) Code [Section 7-1-90](#), relating to judicial review of department action;
 - (vii) Subsection (d) of Code [Section 7-1-91](#), relating to orders to desist from conduct illegal under the laws and regulations of this state;
 - (viii) Code [Section 7-1-94](#), relating to the evidentiary results of examinations and investigations;
 - (ix) Code [Sections 7-1-111](#) and [7-1-112](#), relating to emergency closings;
 - (x) Code [Sections 7-1-110](#) and [7-1-294](#), relating to permissive closings;
 - (xi) Code [Section 7-1-133](#), relating to prohibited advertising;
 - (xii) Paragraph (11) of Code [Section 7-1-261](#), relating to additional operational powers of banks and trust companies;
 - (xiii) Paragraph (3) of subsection (a) of Code [Section 7-1-394](#), relating to criteria to be considered in approving new banks;
 - (xiv) Code [Section 7-1-658](#), relating to loans;
 - (xv) Code [Section 7-1-840](#), relating to criminal prosecutions; and
 - (xvi) Code [Section 7-1-841](#), relating to application of [Title 16](#) provisions;
- (I) For the purposes of Code [Section 7-1-61](#), "financial institution" shall also include a bank holding company as defined in Code [Section 7-1-605](#);

(J) For the purposes of paragraph (10) of Code [Section 7-1-261](#), relating to agency relationships, "financial institution" shall include banks chartered by states other than Georgia; and

(K) For the purposes of Part 6 of Article 2 of this chapter, relating to deposits, safe deposit agreements, and money received for transmission, and Article 8 of this chapter, relating to multiple party deposit accounts, "financial institution" shall also include federal credit unions.

(22) "Insolvency" means:

(A) Inability to meet liabilities as they become due in the regular course of business; or

(B) Insufficiency in actual cash market value of assets to pay liabilities to depositors and other creditors.

(22.5) "Main office" means the principal banking location of a bank as such location appears in the records of the Department of Banking and Finance. If a bank does not designate a main office, the department shall choose a banking location of the bank to be the main office.

(23) "National bank" means a national banking association organized pursuant to 12 U.S.C. Section 21-215b.

(24) "Net assets" means the amount by which the total assets exceed the total debts of a financial institution. Total assets shall include but not be limited to both tangible and intangible assets, including prepaid expenses, prepaid taxes, and accrued income using book values determined in accordance with generally accepted accounting principles applicable to financial institutions. Total assets shall not include intangible assets in the form of good will, core deposit intangibles, or other intangible assets related to the purchase, acquisition, or merger of a bank charter. Total debts shall include all liabilities, other than contingent liabilities, including accrued expenses, deferred or unearned income, and valuation reserves, all determined in accordance with generally accepted accounting principles applicable to financial institutions.

(25) "Paid-in capital" means the sum of the considerations received in the sale or exchange of shares of a bank or trust company in excess of the amount of the capital stock and the expense fund required by Code [Section 7-1-396](#) and includes the surplus, if any, created by or arising out of a reduction of the capital stock of such financial institution effected in a manner permitted by law, any amounts properly regarded as surplus of such financial institution on April 1, 1975, and any amounts transferred from the expense fund as permitted by Code [Section 7-1-412](#).

(26) "Person" means an individual, trust, general or limited partnership, unincorporated association (except a joint-stock association), or any other form of unincorporated enterprise.

(27) "Principal court" means the superior court of the county where the registered office of a financial institution is located or, in the case of a proposed financial institution, will initially be located, as shown in its articles or application for authority to commence business. Whenever under this chapter the principal court is authorized to take any action but lacks, because of constitutional restrictions, jurisdiction or venue over the person or corporation against which

such action is to be taken or over the subject matter which is to be affected by its action, then such action may be taken by the superior court of this state in which jurisdiction and venue are proper or, in the absence of any such court, by a court of another state, a federal court, or a court of a foreign country in which jurisdiction and venue are proper.

(28) "Public body" means an agency, authority, board, commission, instrumentality, or similar entity which is part of or connected with the government or political subdivision referred to in the context.

(29) "Public sale" means a sale as defined in paragraph (31.1) of Code [Section 11-1-201](#).

(29.5) "Registered agent" means the person or corporation on whom service of process is to be made in a proceeding against a bank. Written notice of any change in the identity or address of a bank's registered agent must be delivered to the Department of Banking and Finance in addition to and at the same time as such notice is filed with the Secretary of State. The provisions of Part 1 of Article 5 of [Chapter 2](#) of [Title 14](#) shall apply to any such registered agent.

(30) "Registered office" means the location of the registered agent and may be a banking location.

(30.5) "Retained earnings" means the balance of the net profits, income, gains, and losses from the date of incorporation or from the latest date when a deficit was last eliminated of a financial institution whose articles were granted by the Secretary of State and excludes subsequent distributions to shareholders and transfers to appropriated retained earnings. Retained earnings shall also include any portion of paid-in capital or appropriated retained earnings or, in the case of other organizations, equivalent funds, allocated to retained earnings in mergers, consolidations, or acquisitions of all or substantially all of the property or assets of another such financial institution or other organization permitted by law.

(31) "Savings and loan association" means an association created pursuant to the Home Owners' Loan Act of 1933, 12 U.S.C. Sections 1461-1468, including a federal savings bank.

(32) "Savings bank" means a state chartered bank that has powers no greater than a state bank as provided in this chapter but that may lend and invest in commercial loans in an aggregate amount that does not exceed 50 percent of its total assets. Such bank may elect, subject to department approval, or the department may require, that the savings bank comply with selected provisions of the Home Owners' Loan Act of 1933 that in the judgment and discretion of the department would be consistent with the charter and purpose of the bank. For the purposes of this paragraph, the term "commercial loan" means a loan for business, commercial, corporate, or agricultural purposes.

(33) "Shareholder" means the owner of shares in a financial institution.

(34) "Shares" means the units into which the proprietary interest of the institution is divided.

(34.1) "State savings and loan association" means a bank which pays interest on substantially all of its depositors' funds and the majority of whose loans are secured by first liens on or other security interest in residential real property or upon the security of its deposits.

(35) "Statutory capital base" means the sum of the capital stock, paid-in capital, appropriated retained earnings, and capital debt of a bank or trust company less any amount of good will, core deposit intangibles, or other intangible assets related to the purchase, acquisition, or merger of a bank charter; or accumulated deficit (negative retained earnings).

(36) "Subject to check" includes withdrawal or transfer by negotiable or transferable order or authorization even though such order or authorization does not constitute a check under Code [Section 11-3-104](#).

(37) "Subsidiary" means a corporation controlled by a financial institution which owns at least a majority of its voting shares.

(38) "Third-party payment service" means any system employing checks, drafts, computer transmissions, or other techniques by which a depositor may effect payment to third parties.

(39) "Treasury shares" means shares of a financial institution which have been issued, have been subsequently acquired by, and belong to the financial institution otherwise than in a fiduciary capacity and have not been canceled. Such shares shall be deemed to be "issued" but not "outstanding" shares.

(40) "Trust company" means a corporation existing under the laws of this state on April 1, 1975, or organized under this chapter and authorized by law to engage in the business of acting as a fiduciary.

(Code 1933, 41A-102, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1975, p. 445, 1; Ga. L. 1977, p. 730, 1; Ga. L. 1980, p. 972, 1; Ga. L. 1981, p. 1566, 1; Ga. L. 1982, p. 3, 7; Ga. L. 1982, p. 2496, 1, 2; Ga. L. 1983, p. 493, 2; Ga. L. 1984, p. 949, 1; Ga. L. 1985, p. 258, 1; Ga. L. 1986, p. 458, 1; Ga. L. 1991, p. 94, 7; Ga. L. 1995, p. 673, 1, 2; Ga. L. 1996, p. 6, 7; Ga. L. 1998, p. 795, 1, 2; Ga. L. 2000, p. 174, 1; Ga. L. 2001, p. 362, 24; Ga. L. 2001, p. 970, 1; Ga. L. 2005, p. 826, 1/SB 82; Ga. L. 2006, p. 72, 7/SB 465; Ga. L. 2007, p. 502, 1/SB 70.)

7-1-5. Unauthorized activity as a financial institution.

Whenever it shall appear to the department that any person or corporation is conducting business as a financial institution without authority pursuant to this chapter, the department may determine, for purposes of Parts 4, 7, 8, and 9 of this article, that such person or corporation is a financial institution as defined in paragraph (21) of Code [Section 7-1-4](#).

(Code 1933, 41A-410, enacted by Ga. L. 1978, p. 1717, 1.)

7-1-6. Notices; waivers of notice.

Except as otherwise expressly provided:

(1) Any notice required to be given under this chapter may be delivered in person by first-class mail, or by telegram, charges prepaid, to the last known address of the person or corporation or to the registered office of the corporation. If the notice is sent by mail or by telegraph, it shall be deemed to have been given when deposited in the United States mail or with a telegraph office. If such notice is of a meeting, it shall specify the place, day, and hour of the meeting. Notice of a meeting of shareholders shall be given not less than ten nor more than 60 days before the meeting. Notice of a special meeting shall specify the general nature of the business to be transacted;

(2) Any written notice required to be given under this chapter need not be given if there is a waiver thereof in writing signed by the person or on behalf of the corporation entitled to such notice or by their proxy, whether before or after the time when the notice would otherwise be required to be given, provided that no such waiver shall apply by its terms to more than one required notice;

(3) Attendance of a person, either in person or by proxy, at any meeting shall constitute a waiver of notice of such meeting, except where a person attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting was not lawfully called or convened; and

(4) If the language of a proposed resolution or a proposed plan requiring approval by shareholders is included in a written notice of a meeting of shareholders, the shareholders' meeting considering the resolution or plan may adopt it with such clarifying or other amendments as do not enlarge its original purpose without further notice to shareholders not present in person or by proxy.

(Code 1933, 41A-107, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 2005, p. 826, 2/SB 82; Ga. L. 2006, p. 72, 7/SB 465.)

7-1-7. Publication of notices or advertisements.

(a) Except as otherwise expressly provided, any notice or advertisement required by this chapter to be published in a newspaper shall be published once a week for four weeks in the newspaper which is, on the date of the first such publication, the official organ (as determined pursuant to Code [Section 9-13-142](#)) of the county which is or is to be the location of the main office of the financial institution.

(b) The department may waive or modify any requirement to publish a notice:

(1) In order to facilitate a merger, consolidation, or sale of assets when one of the parties is a failed or failing bank as determined by the commissioner;

(2) Whenever it determines that the public benefit is not significantly served by a second or subsequent publication in a situation where a series of transactions would otherwise require multiple publications;

(3) Where a similar publication required by another state or federal regulator serves substantially the same purpose;

(4) By regulation or order, whenever it determines that a lesser number of publications will reduce administrative burden and will adequately serve the public benefit of the notice; or

(5) For other reasons of regulatory parity.

(c) The department may require proof of publication or modified publication having been completed prior to consummation of the underlying transaction.

(Code 1933, 41A-108, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1980, p. 972, 2; Ga. L. 1987, p. 1586, 1; Ga. L. 1995, p. 673, 3; Ga. L. 1998, p. 795, 3; Ga. L. 2000, p. 136, 7; Ga. L. 2000, p. 174, 2.)

7-1-8. Applicability of common law.

Unless expressly or impliedly displaced by this chapter, general principles of common law shall apply to financial institutions.

(Code 1933, 41A-109, enacted by Ga. L. 1974, p. 705, 1.)

7-1-9. Reservation of power over financial institutions.

The General Assembly shall at all times have power to prescribe such regulations, provisions, and limitations as it may deem advisable, which regulations, provisions, and limitations shall be binding upon financial institutions that are subject to this chapter. The General Assembly shall have the power to amend, repeal, or modify this chapter at pleasure.

(Code 1933, 41A-110, enacted by Ga. L. 1974, p. 705, 1.)

7-1-10. Rules of construction.

(a) The rules of statutory construction contained in [Chapter 3](#) of [Title 1](#) shall apply to this chapter.

(b) Unless otherwise specifically indicated and to the full extent permitted by the Constitution of Georgia, any reference in this chapter to an existing statute or regulation shall mean to such statute or regulation as has been or may in the future be amended or have material added to it. If in any case such construction is not constitutionally permissible, such reference shall mean to the statute or regulation as it existed on April 1, 1975.

(c) Any reference in this chapter to an action by a superior court or other court shall authorize a judge of such court to take such action in term or in vacation, whether present in the county or absent from it.

(Code 1933, 41A-105, enacted by Ga. L. 1974, p. 705, 1.)

7-1-11. Registration of nonresident corporations.

Whenever any financial institution or other corporation domiciled outside this state, including domestic international banking facilities, international bank agencies, international bank representative offices, and representative offices of federally and state chartered financial institutions, is required to register with the department as a prerequisite to the conduct of business in this state or for the purpose of taking title or liens against property located in this state, such registration shall be in lieu of further registration pursuant to Code [Section 16-14-15](#) or any other provisions of law.

(Code 1981, 7-1-11, enacted by Ga. L. 1987, p. 1586, 2.)

PART 2

ORGANIZATION AND PERSONNEL OF DEPARTMENT OF BANKING AND FINANCE

7-1-30. Department created.

There is created the Department of Banking and Finance.

(Ga. L. 1919, p. 135, art. 2, 1; Code 1933, 13-301; Ga. L. 1972, p. 1015, 1101; Ga. L. 1972, p. 1198, 2.)

7-1-31. Position and term of commissioner.

(a) The head of the department shall be the commissioner who shall exercise supervision and control over all divisions and employees of the department.

(b) The commissioner shall be appointed by the Governor, by and with the advice and consent of the Senate, for a four-year term. The initial term of the commissioner shall terminate on January 20, 1976. Each succeeding term of office shall be for four years commencing on the expiration date of the previous term. Beginning July 1, 1999, the salary of the commissioner shall be set by the Governor.

(Ga. L. 1919, p. 135, art. 2, 2; Code 1933, 13-302; Ga. L. 1972, p. 1015, 1101, 1102; Ga. L. 1972, p. 1198, 2, 3; Code 1933, 41A-201, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1999, p. 910, 1; Ga. L. 1999, p. 1213, 1.)

7-1-32. Qualifications of commissioner.

The commissioner shall be of good moral character, shall not have been convicted in any court of competent jurisdiction of any crime involving moral turpitude, shall have been a citizen of this state for not less than three years, and shall have attained the age of 30 years but be less than 70 years. In addition, the commissioner shall have had at least five years' experience as an active officer of a bank or national bank or as an examiner or other officer in a federal or state agency supervising such institutions.

(Ga. L. 1919, p. 135, art. 2, 4; Code 1933, 13-304; Code 1933, 40-3597, enacted by Ga. L. 1972, p. 1015, 1102; Ga. L. 1972, p. 1198, 3; Code 1933, 41A-202, enacted by Ga. L. 1974, p. 705, 1.)

7-1-33. Removal or suspension of commissioner.

The commissioner may be suspended or removed by the Governor whenever the Governor has in his judgment trustworthy information that the commissioner is insane or has absconded or grossly neglected his duties or is guilty of conduct plainly violative of his duties or the restrictions of Code [Section 7-1-37](#).

(Ga. L. 1919, p. 135, art. 2, 7; Code 1933, 13-307; Code 1933, 41A-203, enacted by Ga. L. 1974, p. 705, 1.)

7-1-34. Vacancy in office of commissioner.

In the event there shall be a vacancy in the office caused by death, resignation, disability, disqualification, suspension, or removal of the commissioner, the senior deputy commissioner of banking and finance previously designated by the commissioner as provided in Code [Section 7-1-35](#) shall exercise the powers and perform the duties of the commissioner until a successor is appointed and qualified to serve for the unexpired term of the commissioner.

(Ga. L. 1919, p. 135, art. 2, 3; Code 1933, 13-303; Code 1933, 41A-204, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1989, p. 1211, 1; Ga. L. 1997, p. 485, 2.)

7-1-35. Deputy commissioners, examiners, and assistants.

(a) The commissioner shall appoint from time to time, with the right to discharge at will, a senior deputy commissioner of banking and finance. The commissioner may appoint additional deputy commissioners as needed. All deputy commissioners shall also be ex officio examiners. The commissioner may appoint such additional examiners and assistants as he or she may need to discharge in a proper manner the duties imposed upon the commissioner by law, subject to any applicable state laws or rules or regulations and within the limitations of the appropriation to the department as prescribed in this chapter. Hiring, promotion, and other personnel policies of the department shall be consistent with guidelines or directives of the state, shall be in writing, and shall be made available upon request to employees of the department.

(b) Within the limitations of its annual appropriation, the department may expend funds pursuant to the authority granted under Article VIII, Section VII, Paragraph I of the 1983 Constitution of Georgia necessary to the recruitment, training, and certification of a professional staff of financial examiners. The department may provide for the participation of examiners in such educational, training, and certification programs as the commissioner deems necessary to the continued qualification and recognition of the professional status of examiners. The department may recognize independent certification of professional qualifications as supplemental to the rules and regulations of the state merit system in considering the personnel actions relative to its examiners.

(Ga. L. 1919, p. 135, art. 2, 10, 12; Ga. L. 1920, p. 102, 1; Ga. L. 1922, p. 63, 1; Code 1933, 13-310, 13-312; Ga. L. 1943, p. 257, 1; Ga. L. 1945, p. 403, 1; Ga. L. 1947, p. 673, 1a; Ga. L. 1949, p. 526, 1; Ga. L. 1965, p. 540, 3; Code 1933, 41A-205, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1986, p. 458, 2; Ga. L. 1989, p. 1211, 2; Ga. L. 1996, p. 848, 1; Ga. L. 1997, p. 485, 3; Ga. L. 2005, p. 826, 3/SB 82.)

7-1-36. Oath and bond of commissioner, deputy commissioner, and examiners.

(a) Before entering upon the duties of their offices, the commissioner, each deputy commissioner, and each examiner shall take an oath before the Governor or one of the Justices of the Supreme Court to support the Constitution of the United States and the Constitution of Georgia and to execute faithfully the duties of their respective offices, which oath shall be in writing and subscribed to by the commissioner, each deputy commissioner, or each examiner, as the case may be, and filed in the Governor's office in the case of the commissioner and filed in the commissioner's office in the case of each deputy commissioner and each examiner. Each of them shall also give bond to the State of Georgia with security or securities approved by the Governor in the sum of \$50,000.00 in the case of the commissioner and in the sum of \$10,000.00 in all other cases, conditioned as follows:

(1) That the officer will faithfully discharge, execute, and perform all and singular the duties required of such officer and which may be required by the Constitution and laws of the State of Georgia;

(2) That the officer will faithfully account for all moneys that may be received by such officer from time to time by virtue of his office; and

(3) That the officer will safely deliver to the successor of such office all books, moneys, vouchers, accounts, and effects whatever belonging to said office.

(b) The surety on the bonds shall be a regular incorporated surety company or companies qualified to do business in the State of Georgia, and the premium on the bonds shall be paid as other expenses of the department. Notwithstanding the foregoing, the requirements of this subsection as to surety may be fulfilled by the participation of the department in any surety bond program covering other state officials and employees which provides the required level of surety whether such surety is underwritten by a company qualified to do business in this state or by a self-insurance surety bond program established by law.

(c) Notwithstanding the foregoing, the oath of office of any deputy commissioner or examiner may be administered by the commissioner.

(Ga. L. 1919, p. 135, art. 2, 6, 11; Code 1933, 13-306, 13-311; Code 1933, 41A-206, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1984, p. 22, 7; Ga. L. 1989, p. 1211, 3.)

7-1-37. Restrictions on commissioner, deputy commissioners, and examiners.

(a) Except as provided in subsections (c), (d), and (e) of this Code section, the commissioner, any deputy commissioner, any department employee with financial institution or licensee supervisory responsibilities, or any examiner employed by the department shall not directly or indirectly:

(1) Receive any money or property as a loan from or become indebted to any financial institution or from or to any director, officer, agent, employee, attorney, or subsidiary of a financial institution;

(2) Receive any money or property as a gift from any financial institution or from any director, officer, agent, employee, attorney, or subsidiary of a financial institution, unless consistent with the ethics in government policy of this state;

(3) Give any money or property as a gift to any financial institution or to any director, officer, agent, employee, attorney or subsidiary of a financial institution, unless consistent with the ethics in government policy of this state;

(4) Own any share in or securities of a financial institution or otherwise have an ownership interest in a financial institution; or

(5) Engage in the business of a financial institution.

(b) For purposes of this Code section and subject to subsection (c) of this Code section, the term "financial institution" shall include a bank holding company and any subsidiary of a bank holding company.

(c) Notwithstanding the provisions of subsection (a) of this Code section, the commissioner, any deputy commissioner, any department employee with financial institution or licensee supervisory responsibilities, or examiners employed by the department may borrow money from and otherwise deal with any financial institution or subsidiary thereof existing under the laws of the United States or of any state other than this state, provided the obligee financial institution or subsidiary is not examined or regulated by the department. For the purposes of this subsection, a financial institution shall not be considered regulated solely because it is required to file an exemption from licensing under Code [Section 7-1-1001](#) or solely because it is owned or controlled by another bank or corporation which is or may be examined or regulated by the department. All extensions of credit, including but not limited to such permitted loans, which obligate the commissioner or any deputy commissioner to such a financial institution or subsidiary, directly or contingently by way of guaranty, endorsement, or otherwise, or which renew or modify existing obligations shall be reported by the individual concerned to the Attorney General in writing, within ten days after the execution thereof, showing the nature of the undertaking and the amount and terms of the loan or other transaction. All credit obligations of a similar nature to those set forth above on the part of any other department employee with financial institution or licensee supervisory responsibilities or examiner shall be reported to the commissioner within ten days after the execution thereof.

(d) Nothing in this Code section shall prohibit the commissioner, any deputy commissioner, any department employee with financial institution or licensee supervisory responsibilities, or any examiner of the department from maintaining a deposit in any financial institution, purchasing banking services other than credit services, or owning a single share in a credit union in the ordinary course of business and under rates and terms generally available to other customers of the financial institution. The provisions of this Code section shall not be applicable in the cases of a lender credit card obligation to a financial institution where the maximum outstanding credit may not exceed \$10,000.00 nor to any other credit obligation fully secured by the pledge of a deposit account in the lending institution, provided that the financial institution is not within the employee's assigned examination authority and provided the rates and terms of all such obligations are not preferential in comparison to similar obligations of the financial institution's other customers. Such exempt obligations shall, however, be reported as provided in subsection (c) of this Code section, and the employee shall be disqualified from any dealings with the obligee financial institution.

(e)(1) The commissioner, a deputy commissioner, a department employee with financial institution or licensee supervisory responsibilities, or an examiner of the department may be permitted to own securities of a financial institution under any of the following circumstances:

(A) A deputy commissioner, a department employee with financial institution or licensee supervisory responsibilities, or an examiner of the department may own such a security if the security was obtained prior to commencement of employment with the department;

(B) A deputy commissioner, a department employee with financial institution or licensee supervisory responsibilities, or an examiner of the department may own such a security if the ownership of the security was acquired through inheritance; gift; stock split or dividend; merger, acquisition, or other change in corporate structure; or otherwise without specific intent on the part of the employee to acquire the interest; and

(C) The commissioner, a deputy commissioner, a department employee with financial institution or licensee supervisory responsibilities, or an examiner of the department may own such a security if the security is part of an investment fund, provided that, upon initial or subsequent investment by the employee, excluding ordinary dividend reinvestment, the fund does not have invested, or indicate in its prospectus the intent to invest, more than 30 percent of its assets in the securities of one or more Federal Deposit Insurance Corporation insured depository institutions or Federal Deposit Insurance Corporation insured depository institution holding companies and the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund.

(2) In the case of permissible acquisitions pursuant to subparagraphs (A) and (B) of paragraph (1) of this subsection, the employee shall make a full, written disclosure to the commissioner within 30 days of beginning employment or acquiring the interest. The employee is disqualified from participating in or sharing information regarding any matter or activity that concerns the financial institution. Such disqualification must not, in the judgment of the commissioner, unduly interfere with the employee's duties.

(3) In the event any covered person inadvertently and without intent on his or her part acquires an interest in a security that is not allowed by this subsection, such security shall be disposed of within 90 days of acquisition.

(f) No examiner, which for the purposes of this Code section shall include a supervisor as defined by the department, may examine a financial institution to which he or she is indebted or of which he or she owns securities under the exceptions in subparagraphs (e)(1)(A) and (e)(1)(B) of this Code section, nor may an examiner obtain credit from a financial institution if he or she has examined such financial institution in the preceding 12 months. An examiner who wishes to borrow funds from any financial institution he or she has examined in the past five years must first obtain the written permission of the commissioner. This subsection is included as an additional precaution and is not intended to preclude the operation of any other applicable law or regulation.

(g) The commissioner, any deputy commissioner, any department employee with financial institution or licensee supervisory responsibility, or any examiner shall not directly or indirectly:

(1) Receive any money or property as a loan from any department licensee or any director, officer, agent, employee, or attorney of a department licensee, unless such employee does not examine or exercise supervisory responsibility over that licensee. Any debt owed by a deputy commissioner, department employee with financial institution or licensee supervisory responsibility, or examiner of a department licensee must be reported to the commissioner. Reporting by the commissioner shall be made to the Attorney General;

(2) Receive any money or property as a gift from any department licensee or any director, officer, agent, employee, or attorney of a department licensee, unless consistent with the ethics in government policy of this state;

(3) Give any money or property as a gift to any department licensee or any director, officer, agent, employee, or attorney of a department licensee, unless consistent with the ethics in government policy of this state; or

(4) Engage in the business of a department licensee.

(h) No director, officer, agent, employee, or attorney of a financial institution, individually or in his or her official capacity, shall knowingly participate in a violation of this Code section. However, nothing in this Code section shall restrict the right of the commissioner, any deputy commissioner, any department employee with financial institution or licensee supervisory responsibilities, or any examiner to deal as any other consumer with such director, officer, agent, employee, or attorney in the ordinary course of business in consumer areas of trade or commerce not regulated by the department and under terms and conditions which are not preferential.

(i) The commissioner, any deputy commissioner, any department employee with financial institution or licensee supervisory responsibilities, or any examiner employed by the department who shall violate or participate in a violation of this Code section shall be guilty of a misdemeanor. Violation of this Code section shall be grounds for removal from office.

(j) The commissioner may adopt additional supplementary administrative policies and departmental rules governing ethical conduct and conflicts of interest on the part of employees of the department and providing certain definitions and clarifications to effectuate the purposes of this Code section.

(Ga. L. 1919, p. 135, art. 2, 4, 10; Ga. L. 1919, p. 135, art. 20, 6; Code 1933, 13-304, 13-310, 13-9906; Code 1933, 41A-207, 41A-9904, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1975, p. 445, 2; Ga. L. 1980, p. 919, 1; Ga. L. 1983, p. 532, 1; Ga. L. 1985, p. 149, 7; Ga. L. 1995, p. 673, 4; Ga. L. 1997, p. 485, 4; Ga. L. 2002, p. 1220, 2.)

7-1-38. Commissioner's office expenses.

The commissioner shall be provided with suitable offices and equipment, the expense of which shall be paid by the state in the same manner as the expenses of other offices of the state government are paid.

(Ga. L. 1919, p. 135, art. 2, 8; Ga. L. 1920, p. 102, 1; Ga. L. 1925, p. 119, 1; Code 1933, 13-308; Ga. L. 1963, p. 369, 1; Code 1933, 41A-208, enacted by Ga. L. 1974, p. 705, 1.)

7-1-39. Seal of department; evidentiary effect.

The department shall adopt an official seal. Any paper executed under the seal of the department shall prima facie be deemed to have been executed by a duly authorized official of the department.

(Code 1933, 41A-209, enacted by Ga. L. 1974, p. 705, 1.)

7-1-40. Delegation of authority by commissioner.

(a) Any authority, power, or duty vested in the commissioner or department by a provision of this chapter may be exercised, discharged, or performed by a deputy, assistant, examiner, or employee of the department acting in the commissioner's name and by his delegated authority. In the case of any matters involving the exercise of discretion, the delegation of authority shall be in writing. Any such delegation by the commissioner may be revoked in the same manner in which it was granted.

(b) The commissioner shall be responsible for the official acts of such persons who act in his name and by his authority.

(Code 1933, 13-324, enacted by Ga. L. 1973, p. 526, 2; Code 1933, 41A-210, enacted by Ga. L. 1974, p. 705, 1.)

7-1-41. Prescribing fees; payment procedure.

(a) The department may, by regulation, prescribe annual examination fees, license fees, registration fees, and supervision fees to be paid by the institutions and entities assigned to the department by this title for regulation, supervision, licensure, or registration. In addition, the department may, by regulation, prescribe reasonable application and related fees, special investigation fees, hearing fees, mortgage loan fees, and fees to provide copies of any book, account, report, or other paper filed in its office or for any certification thereof or for processing any papers as required by this title. Such fees may vary by type of institution regulated and nature of the work performed.

(b) The department, in its discretion, may require the payment of such fees in any manner deemed to be efficient, including collection through automated clearing-house arrangements or other electronic means, so that the state receives funds no later than the date the payment is required to be made.

(Code 1933, 41A-212, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1975, p. 445, 3; Ga. L. 1996, p. 848, 2; Ga. L. 2002, p. 1220, 3.)

7-1-42. Enforcement of payment of fees.

In the event any financial institution shall fail or refuse to pay on demand the amount fixed as fees for examinations, the department may proceed through the Attorney General to collect the same by action at law.

(Ga. L. 1919, p. 135, art. 3, 6; Code 1933, 13-406; Ga. L. 1966, p. 692, 23; Code 1933, 41A-213, enacted by Ga. L. 1974, p. 705, 1.)

7-1-43. Disposition of fees collected; payment of expenses from appropriations.

Fees prescribed by this chapter shall be collected by the department and deposited with the Office of Treasury and Fiscal Services. The department may, at its discretion, remit such amounts net of the cost of recovery, which cost may include fees paid to a collection agency or attorney for recovery of moneys due the department. All of the expenses incurred in connection with the conduct of the business of the department shall be paid out of the appropriations of funds to the department by the General Assembly. Such expenses shall include all expenses incurred as travel expenses by personnel of the department when away from their official station as assigned by the commissioner.

(Ga. L. 1919, p. 135, art. 2, 13, 14; Code 1933, 13-313; Code 1933, 13-305, enacted by Ga. L. 1965, p. 540, 1; Code 1933, 41A-211, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1995, p. 673, 5; Ga. L. 2003, p. 843, 1.)

PART 3

OPERATIONS OF DEPARTMENT OF BANKING AND FINANCE

7-1-60. General scope of supervision.

Except where otherwise specifically provided, the department shall enforce and administer all laws of this state relating to financial institutions and shall exercise general supervision over financial institutions in accord with the underlying objectives of this chapter.

(Code 1933, 41A-301, enacted by Ga. L. 1974, p. 705, 1.)

7-1-61. Rules and regulations.

(a) The department shall have the authority to promulgate rules and regulations to effectuate the objectives or provisions of this chapter. Without limiting the generality of the foregoing, the department is expressly authorized to make rules and regulations, consistent with this chapter, relating to organization, operations, and powers of financial institutions to:

(1) Enable financial institutions existing under the laws of this state to compete fairly with financial institutions and others providing financial services in this state existing under the laws of the United States, other states, or foreign governments; or

(2) Protect financial institutions jeopardized or challenged by new economic or technological conditions or by significant changes in the legal environment.

(b) In the exercise of the discretion permitted by this Code section, the commissioner shall consider:

(1) The ability of financial institutions to exercise any additional powers in a safe and sound manner;

(2) The authority of any federally chartered bank, as the term "bank" is defined in Code [Section 7-1-621](#), operating pursuant to federal law, regulation, or authoritative pronouncement;

(3) The powers of other entities providing financial services in this state; and

(4) Any specific limitations on financial institution operations or powers contained in this chapter.

(c) Rules and regulations promulgated by the department may provide for controls, registration, or restrictions reasonably necessary to:

(1) Prevent unfair or deceptive business practices which are prohibited under Code [Section 10-1-393](#);

(2) Prevent deceptive or misleading business practices by financial services providers which may occur by way of alternate delivery systems for the provision of financial products and services such as the Internet or other telecommunication capabilities; or

(3) Prevent or control unfair or deceptive business practices which would operate to the detriment of any competing business or enterprise or to persons utilizing the services of any financial institution, its subsidiary, or affiliate.

(d) All rules and regulations shall be promulgated in accordance with [Chapter 13 of Title 50](#), the "Georgia Administrative Procedure Act," including the requirements for hearing as stated in that chapter. Regulations issued under this or other provisions of this chapter may make appropriate distinctions between types of financial institutions and may be amended, modified, or repealed from time to time.

(e) To provide parity with other federally insured financial institutions, the commissioner may, by specific order directed to an individual financial institution or category of financial institutions, modify or amend the following qualifying or limiting requirements imposed on financial institutions by this chapter:

(1) Collateral requirements and limits on the amount of obligations owing to it from any one person or corporation;

(2) Loan to value or other limitations in lending;

(3) Limitations on the amount of investments in stock or other capital securities of a corporation or other entity;

(4) Limitations on the amount of bank acceptances to be issued; and

(5) If Georgia law has been determined to be federally preempted, other limitations or restrictions on financial institutions contained in this chapter.

No such order will be issued unless the commissioner determines that such activity will not present undue safety and soundness risks to the financial institution or institutions involved. In making such a determination, the commissioner shall consider the financial condition and regulatory safety and soundness ratings of the institution or institutions affected and the ability of management to administer and supervise the activity. Any such order pursuant to this subsection will be available for public review.

(Code 1933, 41A-302, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1989, p. 1249, 1; Ga. L. 1995, p. 673, 6; Ga. L. 1997, p. 485, 5; Ga. L. 2000, p. 174, 3; Ga. L. 2005, p. 826, 4/SB 82.)

7-1-62. Accounting procedures.

The department may promulgate regulations concerning the manner in which the books of financial institutions will be maintained in order to assist the department in its examinations and other supervisory activities, provided that, in all events:

(1) A financial institution shall enter on its books a complete and accurate account of all of its assets, whether the assets are in its name or the name of others, at values which shall not, without the prior approval of the department, exceed the actual cost of the assets to the financial institution; and

(2) A financial institution shall enter on its books a complete and accurate account of its liabilities, its borrowings, and the security interests it has granted and shall maintain additional accounts for losses and expenses.

(Code 1933, 41A-303, enacted by Ga. L. 1974, p. 705, 1.)

7-1-63. Retention of records.

(a) The department shall issue regulations classifying records kept by financial institutions and prescribing the period, if any, for which records of each class shall be retained and the form in which such records shall be maintained. Such periods may be permanent or for a lesser term of years. In issuing such regulations, consideration shall be given to the objectives of this chapter and to:

(1) Evidentiary effect in actions at law and administrative proceedings in which the production of records of financial institutions might be necessary or desirable;

(2) State and federal statutes of limitation applicable to such actions or proceedings;

(3) Availability of information contained in the records of the financial institution from other sources;

(4) Requirements of electronic systems of transferring funds; and

(5) Other pertinent matters;

so that financial institutions will be required to retain records for as short a period as is commensurate with interests of customers, shareholders, and the people of this state.

(b) The regulations of the department shall not require financial institutions to maintain originals of checks or items for the payment of money or original computer tapes or original records with respect to accounts which have been inactive for a period of 12 successive months. Where a financial institution employs computers, its records may consist of legible products of computer operations.

(c) Any copy of a record or of a reproduction of a record stored in an electronic or photographic medium permitted to be kept in lieu of the original, under this Code section or the regulations of the department, including legible products of computer operations, shall be admissible in evidence as though it were the original.

(Ga. L. 1953, p. 70, 3; Ga. L. 1966, p. 692, 45-47; Code 1933, 41A-304, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1975, p. 445, 4.)

7-1-64. Department examinations and investigations; disclosure of information or prior notice regarding examinations of financial institutions.

(a) Except as otherwise provided in subsection (b) of this Code section, the department shall examine all financial institutions at least once each year and may examine or investigate any financial institution more frequently at any time it deems such action necessary or desirable. At least once annually the examination shall consist of a comprehensive review of the accounts, records, and affairs of the institution.

(b) The department may, consistent with the objectives of this chapter and the purposes listed below, alter the examination frequency and scope as set out in subsection (a) of this Code section:

(1) To achieve cooperation and coordination with other state and federal regulatory authorities including but not limited to examination programs of banks or bank holding companies having multistate operations;

(2) To assure that appropriate time and attention are devoted to the supervision of troubled financial institutions; or

(3) To minimize the examination burden on well-managed financial institutions which have consistently been operated with safe and sound banking practices.

(c) In the case of a financial institution which is a member of the Federal Reserve System or whose deposits are insured by a public body of the United States, the department may accept, in lieu of any examination required by this Code section, examinations or reports thereof made pursuant to the Federal Reserve Act or statutes of the United States authorizing such insurance.

(d) Employees of the department shall not divulge any information or provide prior notice, directly or indirectly, to any officer, director, agent, representative, or employee of a financial institution concerning the time or date of examination of the financial institution except in accordance with internal policy prescribed by the commissioner. Employees violating the policy of the commissioner relating to information or prior notice concerning examinations shall be subject to immediate dismissal.

(Ga. L. 1919, p. 135, art. 3, 1, 2; Ga. L. 1925, p. 165, 10; Ga. L. 1927, p. 344, 3; Code 1933, 13-401, 13-402, 25-122, 109-503; Ga. L. 1935, p. 114, 1; Ga. L. 1937-38, Ex. Sess., p. 307, 5; Ga. L. 1943, p. 279, 1; Ga. L. 1945, p. 253, 1, 2; Ga. L. 1956, p. 742, 4; Ga. L. 1960, p. 977, 1; Ga. L. 1960, p. 1175, 1; Ga. L. 1962, p. 74, 3; Ga. L. 1966, p. 692, 18, 19; Ga. L. 1968, p. 465, 8; Code 1933, 41A-305, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1981, p. 1366, 1; Ga. L. 1995, p. 673, 7; Ga. L. 1997, p. 485, 6.)

7-1-65. Examinations and investigations on request.

When requested in writing by the board of directors or holders of a majority of the shares of a financial institution, the department, at a time fixed by it, shall examine or investigate the affairs and condition of the financial institution. However, this provision shall not be construed to mean that such institution, directors, or shareholders shall have any greater right to require the department to disclose the results of such examination or investigation than they have in case of any examination or investigation at the insistence of the department nor shall the department be required under this Code section to make more than one examination per year of any financial institution.

(Code 1933, 41A-306, enacted by Ga. L. 1974, p. 705, 1.)

7-1-66. Method of examination and investigations; special examiners; subpoenas.

(a) Examinations and investigations shall be made by the commissioner or by qualified examiners or employees empowered in writing by the department to make examinations or investigations. The department may, when the occasion requires, appoint special examiners and prescribe their duties and powers.

(b) Officials authorized to make examinations or investigations shall have the power and authority to administer oaths and to examine under oath any person (including any officer, director, agent, attorney, member, or employee of any financial institution) whose testimony may be relevant to the examination or investigation. Such officials shall have the authority and power to compel the appearance and attendance of any such person and the production by such person of pertinent books and papers, including books and papers to which the person has access because of his position with a financial institution.

(c) If any person shall fail or refuse to appear or to testify or to produce books and papers after being ordered to do so pursuant to this Code section, such failure or refusal may be reported in writing to the principal court; and said court shall thereupon cause a subpoena to be issued requiring such person to attend, testify, and produce books and papers. For failure to obey such subpoena, the person may be adjudged in contempt and punished accordingly.

(Ga. L. 1919, p. 135, art. 2, 18; Ga. L. 1919, p. 135, art. 3, 3; Ga. L. 1919, p. 135, art. 20, 1; Code 1933, 13-318, 13-403, 13-9901; Ga. L. 1966, p. 692, 20; Code 1933, 41A-307, 41A-9903, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1981, p. 1366, 19.)

7-1-67. Reports of examinations.

(a) Any official who shall make an examination pursuant to this chapter shall reduce the result thereof to writing in such form as shall be prescribed by the department. Such report shall contain a full, true, and correct statement of the condition of the financial institution in the case of a comprehensive examination or of the matter subject to inquiry in the case of other examinations.

(b) Each report shall be the property of the regulatory agency which generates such report; provided, however, that a copy of such report may be furnished to the examined financial institution for its internal, confidential use. A financial institution or any officer, director, or employee thereof shall not disclose a report or any portion of its contents. If a subpoena or discovery request is received for a report or any portion of its contents, the financial institution must deliver a copy of such subpoena or discovery request to the department immediately.

(Ga. L. 1919, p. 135, art. 3, 4; Code 1933, 13-404; Ga. L. 1966, p. 692, 21; Code 1933, 41A-308, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1998, p. 795, 4.)

7-1-68. Reports to department; publication of summaries; penalty for noncompliance.

(a) The department may require reports on the condition of or any particular facts concerning any financial institution at any time the department deems it necessary or advisable.

(b) The form of all reports, the information to be contained in them, and the date on which they shall be due shall be prescribed by the department. The reports shall be verified by the oath or affirmation of the president, secretary, or other managing officer of the institution.

(c) Every financial institution shall publish annually abstract summaries of two of its reports of condition designated for this purpose by the department and shall file proof of such publication with the department. Such publication shall be made only once in a newspaper of general circulation in the county of the main office of the institution. The department may waive this requirement, in whole or in part, with respect to financial institutions which make their financial statements readily available to the public, including their customer base, and with

respect to a class of financial institutions which does not do business with the public generally and may limit the required publication to the customer base served by the institution.

(d) Any financial institution which fails to prepare or publish any report or to furnish any proof of publication, in accordance with this Code section, or fails to provide any facts or information requested under subsection (a) of this Code section, shall pay the department a penalty of \$100.00 for each day after the time fixed by the department for filing such report, making such publication, or furnishing such proof of publication, but the department may, in its discretion, relieve any financial institution from the payment of such penalty, in whole or in part, if good cause be shown. If a financial institution fails to pay a penalty from which it has not been relieved, the department may, through the Attorney General, maintain an action at law to recover it.

(Ga. L. 1919, p. 135, art. 4, 1, 2, 5; Ga. L. 1920, p. 102, 1; Ga. L. 1925, p. 165, 10; Ga. L. 1927, p. 344, 3; Code 1933, 13-501, 13-502, 25-122, 109-503; Ga. L. 1935, p. 114, 1; Ga. L. 1937, p. 425, 1; Ga. L. 1937-38, Ex. Sess., p. 307, 5; Ga. L. 1943, p. 279, 1; Ga. L. 1956, p. 742, 4; Ga. L. 1960, p. 977, 1; Ga. L. 1960, p. 1175, 1; Ga. L. 1962, p. 74, 3; Ga. L. 1968, p. 465, 8; Code 1933, 41A-309, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1975, p. 445, 5; Ga. L. 1981, p. 1366, 2; Ga. L. 1995, p. 673, 8; Ga. L. 1998, p. 795, 5.)

7-1-69. Retention of reports.

The reports of examinations and investigations made by the department and reports made by financial institutions shall be preserved by the department for a period of five years, after which they may be destroyed.

(Ga. L. 1919, p. 135, art. 2, 19; Code 1933, 13-319; Code 1933, 41A-310, enacted by Ga. L. 1974, p. 705, 1.)

7-1-70. Disclosure of information.

(a) Records of the department, regardless of the medium by which stored, are confidential. Except as otherwise provided in this Code section, this chapter, or departmental rule or regulation, and, notwithstanding the provisions of Article 4 of [Chapter 18](#) of [Title 50](#), such records shall not be open to inspection by or made available to the public. The commissioner and all other officials and employees of the department shall not disclose facts and information obtained in the course of their duties, including information obtained from examinations, investigations, and reports as required or authorized in this part. The department may, however, provide by rule, regulation, or order for public access to certain records which, in the opinion of the commissioner, do not contain sensitive information and from which disclosure the public would benefit.

(b) Subject to the exceptions, safeguards, and limitations contained in subsection (c) of this Code section, the restrictions of subsection (a) of this Code section shall not apply to disclosures:

- (1) Within the department or made to the Governor in the course of official duties;
- (2) Required by law, including disclosures required by subpoena or other legal process of a court or administrative agency having competent jurisdiction in legal proceedings and, where applicable, when the financial institution is a party or where the information is not otherwise available upon direct subpoena of a financial institution;
- (3) In prosecutions or other court actions to which the department or the commissioner is a party;
- (4) Made to federal or state financial institution supervisory agencies, other federal or state regulatory agencies with legal authority over such institution, the United States Department of Justice (including the Federal Bureau of Investigation), the United States Department of the Treasury, the Georgia Bureau of Investigation, or state or local law enforcement authorities;
- (5) Made to any officer, attorney, or director of the involved financial institution, made to any officer, attorney, or director of the involved financial institution's holding company, or with the written consent of said financial institution or holding company;
- (6) Made in a publication of the department which is available to the general public;
- (7) Of general economic and similar data considered by the department in regard to requests for new articles, new branches, changes in the location of facilities, or similar matters made to parties interested in the department's action in regard thereto; and
- (8) Made to a financial institution concerning the past job performance of a prospective employee with the written consent of such prospective employee, provided such written consent shall not be required in circumstances provided for in Code [Section 7-1-840](#).

(c) The following exceptions, safeguards, and limitations shall apply:

- (1) Disclosures made under subsection (b) of this Code section shall be made, where appropriate, under safeguards designed to prevent further dissemination of confidential data; provided, however, that for disclosures of suspected criminal activity made under paragraph (4) of subsection (b) of this Code section, the confidentiality safeguards already in place within those agencies shall be considered adequate. Except for disclosures under paragraph (2) of subsection (b) of this Code section, the department shall not be required to make authorized disclosures where it deems such disclosures undesirable;
- (2) All disclosures shall be limited to only those documents directly relevant to the inquiry or legal dispute at issue; and

(3) The documents listed below shall be considered absolutely privileged and confidential and shall be exempt from open inspection and not subject to disclosure by the department without a specific order of court pursuant to Code [Section 7-1-90](#), which order specifically holds the public interest in the safety and soundness of the banking system and its regulation to be outweighed by other interests of justice. Such exempt documents shall include:

(A) Departmental internal investigations, documents, and notes which reflect the deliberative processes of employees;

(B) Opinions provided in confidence to the department regarding proposed new banks;

(C) Informal notes and memos of the department that are not purely factual in nature;

(D) Advisory opinions;

(E) Recommendations, summaries, and analyses that are utilized for departmental internal purposes and are not final orders or reports; and

(F) Other similar materials or notes.

(d) Notwithstanding any other provision of this Code section, the commissioner may, without waiving any privilege, authorize access to confidential supervisory information for any appropriate governmental, law enforcement, or other public purpose.

(e) Violation of this Code section shall be grounds for removal from office.

(Code 1933, 41A-311, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1975, p. 445, 6; Ga. L. 1982, p. 3, 7; Ga. L. 1989, p. 1211, 4; Ga. L. 1998, p. 795, 6; Ga. L. 2002, p. 1220, 4; Ga. L. 2003, p. 843, 2.)

7-1-71. Removal of officers, directors, or employees.

(a) The department, by order of the commissioner, shall have the right to require the immediate suspension from office of any director, officer, or employee of any financial institution and to prohibit any such person's participation in the affairs of any financial institution if the department finds such person:

(1) To be dishonest, incompetent, or reckless in the management of the affairs of the financial institution;

(2) To have persistently violated the laws of this state;

(3) To have violated the lawful orders, regulations, or conditions of a written agreement of or with the department;

(4) To have been indicted for any crime involving moral turpitude or breach of trust;

(5) To have evidenced an inability to conduct his or her own financial affairs or the affairs of a company in which such individual owns a majority interest or has responsibility for financial matters, in a fiscally responsible, diligent, or lawful fashion; or

(6) To have engaged in any unsafe or unsound practice in connection with any insured depository institution or to have demonstrated willful or continuing disregard for the safety and soundness of a financial institution.

(b) A prohibition order, which prohibits an individual from participating in any capacity in the affairs of a financial institution, may be issued by the commissioner in connection with a suspension order issued under the authority of this Code section. Such prohibition order may provide that if an officer, director, or employee has been removed from office temporarily or permanently at a financial institution, he or she may also be prohibited from participating in any manner in the conduct of the affairs of any financial institution during the time the prohibition order is in effect.

(c) The department shall serve written notice upon the party of its determination to suspend such person from office or prohibit such person from participating in the affairs of a financial institution pursuant to subsections (a) and (b) of this Code section. A suspension order or a prohibition order shall be effective upon such service and shall specify whether the suspension is temporary, the duration and terms of the suspension if temporary, or if it is permanent. The prohibition order shall be consistent in duration with the suspension order.

(d) Any person suspended or prohibited under this Code section may request his or her reinstatement in writing delivered to the department within ten days of his or her suspension or prohibition. If such reinstatement is not requested, the director, officer, or employee shall be considered permanently removed and, if so ordered, permanently prohibited from participation in the affairs of any financial institution.

(e) Upon request for reinstatement, the department shall conduct an internal review of the matter during which such person has the opportunity to state his or her case to the commissioner. The department shall deliver the findings of the hearing to such person. If the person requests further review, the department may refer the matter to the Office of State Administrative Hearings under [Chapter 13 of Title 50](#), the "Georgia Administrative Procedure Act," where a nonpublic hearing shall be held to review the department's decision. The final decision of the department shall be conclusive, except as it may be subject to judicial review under Code [Section 7-1-90](#).

(f) Any order issued pursuant to this Code section shall also be delivered to the financial institution with which the party was associated at the time such order was issued.

(Ga. L. 1919, p. 135, art. 5, 3; Code 1933, 13-603; Code 1933, 41A-312, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1983, p. 602, 1; Ga. L. 1995, p. 673, 9; Ga. L. 1997, p. 485, 7; Ga. L. 2005, p. 826, 5/SB 82; Ga. L. 2006, p. 72, 7/SB 465.)

7-1-72. Regulation of persons performing services for financial institutions.

(a) Notwithstanding other provisions of law and consistent with the objectives of this chapter as set forth in Code [Section 7-1-3](#) and subject to the procedures provided in regulations of the department, a financial institution may provide financial services to its customers either directly or through employment of duly licensed persons provided such financial institution or its licensed employee or agent has qualified under other laws otherwise applicable to other providers of such financial services.

(b) Where financial services are being performed by a person or corporation for a financial institution, such person or corporation shall be subject to:

(1) Examination and investigation by the department relative to character, reputation, and financial stability; and

(2) Regulation by the department in regard to such services to the same extent as if such services were being performed by the financial institution for its own internal benefit or as an extension of the range of financial services products offered to customers of the financial institution.

(c) In the event of conflicting statutory responsibilities, except as otherwise provided by law, the department shall not grant licenses to providers of financial services to or through financial institutions. The department shall be the responsible authority in reviewing, authorizing, or otherwise regulating, consistent with this chapter, the contractual relationship entered into by financial institutions for the provision of such services or incidental to application for further licensing.

(d) For purposes of this Code section, "financial services" shall include, but is not limited to, business and consumer financial record keeping, investments, planning and advisory assistance, surety, brokerage, information, and protective services performed for a financial institution which are normally performed by the financial institution for its own benefit or provided to the customers of the financial institution incidental to its conduct of the banking business. The department may further define "financial services" to include other activities of a financial nature which it determines to be consistent with the safe and sound operation of a banking business, not otherwise in violation of this chapter, and in the public interest.

(Code 1933, 13-411, enacted by Ga. L. 1973, p. 526, 3; Code 1933, 41A-313, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1975, p. 445, 7; Ga. L. 1987, p. 1586, 3; Ga. L. 2004, p. 458, 1.)

7-1-73. Regulation of affiliates.

The department may examine or investigate any affiliate of a financial institution for the purpose of determining the condition of the financial institution to the same extent and in the same manner as it may examine or investigate the financial institution itself.

(Code 1933, 13-411, enacted by Ga. L. 1973, p. 526, 3; Code 1933, 41A-314, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1975, p. 445, 8.)

7-1-74. Annual report of department.

For each calendar year the department shall compile and publish an annual report in such form and containing such information as it may determine necessary to summarize reasonably its operations. The report may contain recommendations which the department may have for changes in the laws governing financial institutions.

(Ga. L. 1919, p. 135, art. 2, 15, 16, 17; Ga. L. 1919, p. 135, art. 7, 28; Ga. L. 1920, p. 102, 1; Ga. L. 1922, p. 63, 1; Ga. L. 1925, p. 119, 1; Code 1933, 13-315, 13-316, 13-317; Code 1933, 41A-315, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1997, p. 485, 8.)

7-1-75. Discretion of department.

Whenever in this chapter the department is authorized but not required to take any action, the taking of such action shall be within the discretion of the commissioner or his duly authorized deputy. The department shall not be required to grant opportunity for hearing except where such hearing is specifically required by this chapter or [Chapter 13](#) of [Title 50](#), the "Georgia Administrative Procedure Act." The department shall maintain accurate memoranda or transcripts of all hearings conducted by the department pursuant to this Code section.

(Code 1933, 41A-316, enacted by Ga. L. 1974, p. 705, 1.)

7-1-76. Department may act after time limit without resubmittal; withdrawal of applications and requests; imposition of conditions; nullification.

(a) Failure of the department to act within any of the time limits established by this chapter or regulations issued pursuant thereto shall not deprive the department of jurisdiction thereafter to act in regard to the matter involved without need for resubmittal of any application, request, or similar action.

(b) Any action, application, or request requiring department approval under this chapter may be withdrawn by the applicant prior to department action thereon without prejudice to the applicant's right to resubmit such application at a later date. If such application has been forwarded to the department through the Secretary of State, the department shall notify the Secretary of State of any such withdrawal and that the application or request is no longer pending.

(c) The department may impose conditions on any approval, including but not limited to conditions designed to address competitive, financial, managerial, safety and soundness, convenience and needs, compliance, and other concerns, to ensure that such approval is consistent with the provisions of this chapter.

(d) The department may nullify a decision on any request, action, or application if:

(1) The department becomes aware of any material misrepresentation or omission by the applicant;

(2) The department is not promptly informed by the applicant of a subsequent material change in circumstances;

(3) The decision is contrary to law, regulation, or departmental policy; or

(4) The decision was granted due to clerical or administrative error or was based on a material mistake of law or fact.

(Code 1933, 41A-317, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1998, p. 795, 7.)

7-1-77. Approval by commissioner of state or federal rules and regulations affecting financial institutions.

Any rule, regulation, order, or administrative directive issued by a state or federal official, agency, or entity which is intended to be applicable to banks, banking associations, bank holding companies, building and loan associations and savings and loan associations, credit unions, or companies engaged in selling money orders or any other company or financial institution under the supervision of the commissioner and required to report to the commissioner or subject to rules and regulations issued by the commissioner shall be effective as to any such company or financial institution only after the rule, regulation, order, or other directive has been approved in writing by the commissioner.

(Code 1933, 41A-318, enacted by Ga. L. 1979, p. 950, 1.)

7-1-78. Agreements with other regulatory authorities.

(a) The department may, at its discretion, enter into cooperative or reciprocal agreements with other regulatory authorities and may furnish to such authorities information contained in the examinations, reports, and institution files, provided the information is to be used for confidential, regulatory purposes.

(b) Furnishing information as permitted by this Code section shall not be deemed to change the confidential character of the information furnished.

(c) The department may accept reports of examination and other records from such authorities in lieu of conducting its own examination.

(d) The department may take such actions as are reasonably necessary, either independently or with such regulatory agencies, to facilitate the regulation of financial services providers doing business in this state.

(Code 1981, 7-1-78, enacted by Ga. L. 1995, p. 673, 10; Ga. L. 2004, p. 458, 2.)

7-1-79. Discretionary expedited approval process; considerations.

(a) The department may determine that formal approvals for certain transactions or activities to be conducted by its regulated entities are not necessary but may be replaced by a discretionary expedited approval process to begin with written notice to the department by the entity which describes the transaction or activity in a form and with a specificity acceptable to the department. For such instances, the department shall promulgate rules and regulations consistent with the authority provided to it in this chapter.

(b) In the exercise of the discretion permitted by this Code section, the commissioner shall consider:

(1) Whether the transaction or activity poses unacceptable safety and soundness risks;

(2) Whether the transaction or activity is warranted only for financially strong and well-managed institutions, as such institutions are further defined in department regulations;

(3) Whether the transaction or activity is necessary to reduce the burden on financial institutions or other entities which the department regulates;

(4) Whether the transaction or activity will assist regulated entities in remaining competitive and responsive to both economic and consumer demands; and

(5) Whether the transaction or activity is consistent with the objectives of this Code section.

(Code 1981, 7-1-79, enacted by Ga. L. 1997, p. 485, 9.)

PART 4
PROCEEDINGS INVOLVING THE DEPARTMENT OF BANKING AND FINANCE

7-1-90. Judicial review of department actions.

(a) Any final action of the department or refusal of the department to act may be subject to judicial review by any person or corporation affected by such action. Such action shall be brought within 60 days of the final action or refusal of action by the department as a special statutory proceeding in the county in which the affected person or corporation resides or is domiciled if within this state (which in the case of a corporation shall be the county of its registered office if it has such an office) or in Fulton County if the affected person or corporation resides or is domiciled outside of this state. The review shall be conducted by the court without a jury. The court shall not substitute its judgment for that of the department but may:

- (1) Compel department action unlawfully withheld; or
- (2) Hold unlawful and set aside department action found to be:
 - (A) In violation of constitutional or statutory provision;
 - (B) In excess of statutory authority;
 - (C) Made upon unlawful procedure; or
 - (D) Arbitrary, capricious, or otherwise in abuse of discretion,

provided that any action reviewable under [Chapter 13](#) of [Title 50](#), the "Georgia Administrative Procedure Act," or through the injunction procedure of Code [Section 7-1-155](#) shall be reviewed under that chapter or Code section and not under this Code section.

(b) Appeals from all final orders and judgments entered by the superior court under this Code section may be taken to the Court of Appeals or the Supreme Court in the same manner as in other cases.

(Code 1933, 41A-401, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1975, p. 445, 9; Ga. L. 1981, p. 1366, 3.)

7-1-91. Orders by department; enforcement; civil penalty.

(a) Whenever it shall appear to the department that the capital stock of a financial institution has been reduced below the minimum required by law or below the amount required by its

articles or that its net assets are less than the amount of its capital stock, the department may issue a written order directing such corporation to restore the deficiency within such period as shall be specified in the order.

(b) Whenever it shall appear to the department that any financial institution is not keeping its books and accounts in such manner as to enable the department, with reasonable facility, to ascertain the true condition of the financial institution, the department may issue a written order requiring such financial institution, within such period as shall be specified in the order, to open and keep such books as the department may, in its discretion, reasonably determine are essential for the purpose of keeping accurate and convenient records of the transactions and accounts of such financial institution.

(c) Whenever any financial institution shall refuse to submit its records and affairs to a legally conducted examination or investigation by the department, the department may issue a written order requiring such financial institution to permit the commissioner or other duly authorized examiner to make such examination or investigation, within such period as shall be specified in the order.

(d) Whenever it shall appear to the department that any financial institution has violated its articles or any law of this state or any order or regulation of the department or that any financial institution is conducting business in an unsafe or unauthorized manner, the department may issue a written order requiring the financial institution to cease and desist from such unsafe and unauthorized practices.

(e) Whenever a financial institution shall fail to comply with the terms of an order of the department which has been properly issued under the circumstances, the department, upon notice of three days to the financial institution, may, through the Attorney General, petition the principal court for an order directing the financial institution to obey the order of the department within such period as shall be fixed by the court. Upon the filing of such petition, the court shall allow a rule to show cause why it should not be granted. Whenever, after a hearing upon the merits or after failure of the financial institution to appear when ordered, it shall appear that the order of the department was properly issued, the court shall grant the petition of the department.

(f) Any financial institution which violates the terms of any order issued pursuant to this Code section shall be liable for a civil penalty not to exceed \$1,000.00. Each day during which the violation continues shall constitute a separate offense. In determining the amount of penalty, the department shall take into account the appropriateness of the penalty relative to the size of the financial resources of the institution, the good faith efforts of the financial institution to comply with the order, the gravity of the violation, the history of previous violations by the financial institution, and such other factors or circumstances as shall have contributed to the violation. The department may at its discretion compromise, modify, or refund any penalty which is subject to imposition or has been imposed pursuant to this Code section. The financial institution or other person assessed as provided in this subsection shall have the right to request a hearing into the matter within ten days after notification of the assessment has been served upon the financial institution involved; otherwise, such penalty shall be final except as to judicial review as provided in Code [Section 7-1-90](#).

(g) All penalties recovered by the department pursuant to this Code section shall be paid into the state treasury to the credit of the general fund; provided, however, that the department at its discretion may remit such amounts recovered, net of the cost of recovery, in the same manner as prescribed for judgments received through derivative actions pursuant to the provisions of Code [Section 7-1-441](#).

(h) The term "financial institution" as used in this Code section shall include a bank holding company as defined in Code Section 7-1-605 and those entities required to be licensed pursuant to Article 4A of this chapter and any officer, director, employee, agent, or other person participating in the conduct of the affairs of the financial institution subject to the orders issued pursuant to this Code section.

(Ga. L. 1919, p. 135, art. 5, 1; Code 1933, 13-601; Code 1933, 41A-402, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1975, p. 445, 10; Ga. L. 1985, p. 258, 2; Ga. L. 1998, p. 795, 8.)

7-1-92. Forfeiture proceedings.

(a) Articles of financial institutions existing under the laws of this state are subject to forfeiture:

(1) In the case of an institution subject to such requirements, for failure to file its annual report with the Secretary of State or its annual license or occupation tax return within the time required by law;

(2) For failure to maintain a registered office in this state as required by the provisions of [Title 14](#), relating to corporations, or by Code [Section 7-1-132](#);

(3) For having procured its articles through fraud;

(4) For failure to organize and proceed to do business within a period of 24 months from the date of the certificate of incorporation;

(5) For failure to obey a final court order issued pursuant to subsection (a) of Code [Section 7-1-91](#) within the time specified in such order; or

(6) Where, because of violation of law or its articles or the unsafe condition or manner of operation of the financial institution, its continued existence is likely to injure the public or the institution's creditors or depositors.

(b) Where such grounds exist, the department, through the Attorney General and in the name of the state, is authorized to institute quo warranto or other appropriate proceedings in the principal court to vacate and forfeit the articles of any financial institution.

(c) Where the articles of any financial institution shall be forfeited, the department shall, if it has not already done so, take charge of the business and assets of such institution and proceed to

liquidate it in the same manner as is herein provided in cases where the department takes possession of a financial institution directly.

(d) No action to forfeit the articles of any financial institution shall be brought except as provided herein, but any person or corporation shall have the right to submit to the department any facts which under the law would authorize the forfeiture of the articles of a financial institution.

(e) On and after April 1, 1975, the provisions of [Title 14](#), relating to forfeiture, shall not be applicable to financial institutions.

(Ga. L. 1919, p. 135, art. 15, 1-4; Ga. L. 1925, p. 165, 10; Code 1933, 13-1601, 13-1602, 13-1603, 13-1604, 25-122; Ga. L. 1935, p. 114, 1; Ga. L. 1937-38, Ex. Sess., p. 307, 7; Ga. L. 1943, p. 279, 1; Ga. L. 1949, p. 442, 1; Ga. L. 1956, p. 742, 4; Ga. L. 1960, p. 977, 1; Ga. L. 1962, p. 74, 3; Ga. L. 1968, p. 465, 8; Code 1933, 41A-403, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1975, p. 445, 11.)

7-1-93. Injunction and other actions by department.

The department may bring an appropriate civil action to enforce any provision of this chapter or regulations issued hereunder, whether by injunction or otherwise, in the superior court of this state having jurisdiction over one or more of the defendants.

(Code 1933, 13-208, enacted by Ga. L. 1960, p. 67, 7; Ga. L. 1970, p. 954, 6; Code 1933, 41A-404, enacted by Ga. L. 1974, p. 705, 1.)

7-1-94. Evidential value of results of examinations or investigations.

(a) The record of any examination or investigation of a financial institution by the department or the report by the examiner or employee of the department who conducted such examination or investigation or a copy of either, when duly certified by the department, shall, in the absence of any applicable privilege, be admissible and constitute prima-facie evidence of facts therein stated, but not of conclusions drawn by the examiner from such facts, in any action at law or equity in which one of the parties is the department or any officer or employee thereof, either in his official capacity or otherwise, or the financial institution subjected to examination or investigation.

(b) The department, with the permission of the court, may edit out of any report to be admitted as evidence pursuant to subsection (a) of this Code section any portion of the report which is not pertinent to the issue in question before the court or which would tend unnecessarily to affect adversely the public confidence in the financial institution.

(Ga. L. 1919, p. 135, art. 2, 20; Ga. L. 1919, p. 135, art. 3, 10; Ga. L. 1920, p. 102, 1; Code 1933, 13-320, 13-410; Ga. L. 1966, p. 692, 27; Code 1933, 41A-405, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1975, p. 445, 12.)

7-1-95. Admissibility of department's certificates and copies.

When duly certified by the department, a copy of any book, paper, or document on file with it or a certificate under its seal shall be prima-facie evidence of the facts therein stated in any court of law or equity or in any investigation or proceeding authorized by law or for any other purpose and shall be admissible without any additional authentication; but in any proceeding the court or public body having jurisdiction may, on cause shown, require production of the original.

(Code 1933, 41A-406, enacted by Ga. L. 1974, p. 705, 1.)

7-1-96. Liability on bonds for nonperformance of duty.

The commissioner, the deputy commissioner, and the examiners shall be liable on their official bonds to any person or corporation injured on account of the failure of the commissioner, the deputy commissioner, or any examiner to discharge faithfully the duties of his office. An action may be brought thereon in any court of competent jurisdiction in the name of the state for the benefit of the injured party.

(Ga. L. 1919, p. 135, art. 2, 21; Code 1933, 13-321; Code 1933, 41A-407, enacted by Ga. L. 1974, p. 705, 1.)

7-1-97. Costs of actions by or against department.

The costs of any actions or proceedings by or against the department shall be taxed by the judge of the superior court in which such action is brought either against the opposite party to such action, or against the financial institution concerning which the action is brought, or against the department, in which latter event such costs shall be paid as other expenses of the department are paid.

(Ga. L. 1919, p. 135, art. 2, 22; Ga. L. 1931, p. 7, 91; Code 1933, 13-322; Code 1933, 41A-408, enacted by Ga. L. 1974, p. 705, 1.)

7-1-98. Department of Law to advise department.

It shall be the duty of the Department of Law to advise the department on any question of law submitted by it.

(Ga. L. 1919, p. 135, art. 2, 23; Ga. L. 1931, p. 7, 91; Code 1933, 13-323; Code 1933, 41A-409, enacted by Ga. L. 1974, p. 705, 1.)

7-1-99. Duties and responsibilities of department regarding interest and usury complaints; advisory opinions; effect.

(a) Except as provided in Chapter 3 of this title, as amended, and Chapter 22 of [Title 33](#), as amended, the department is designated as the appropriate agency of this state to receive and investigate complaints or allegations regarding violations of the interest and usury laws of this state. In processing such matters, the department may refer complaints or allegations to other state or federal officials or agencies which have jurisdiction over the lender involved for investigation or other action.

(b) (1) The department, in consultation with the Department of Law, may render and publish advisory opinions for the assistance and guidance of financial institutions as defined in this chapter.

(2) Reliance in good faith upon an opinion issued as provided in paragraph (1) of this subsection shall constitute prima-facie evidence of good faith on the part of any person charged with any violation, resulting from the reliance, which subjects him to forfeiture or other sanctions imposed by the interest and usury laws. The provisions of this paragraph shall apply even if, following the reliance, the opinion is amended, rescinded, or determined by any judicial or other authority to be invalid.

(Code 1933, 41A-411, enacted by Ga. L. 1979, p. 951, 1; Ga. L. 1989, p. 14, 7.)

PART 5

PERMISSIVE CLOSING DAYS, EMERGENCY CLOSINGS, BUSINESS RESTRICTIONS, AND VOLUNTARY LIQUIDATIONS

7-1-110. Permissive closing days; deferral of business conducted on Saturday.

Any financial institution may remain closed one day each week in addition to Sundays and other legal holidays; and any act authorized, required, or permitted to be performed at or by any

such financial institution on a day when it is closed may be performed on the next succeeding business day; and no liability or loss of rights of any kind shall result from the delay. Saturday shall not be construed to be a business day and any business conducted on Saturday may be deferred to the next succeeding business day, provided such deferral is applicable to all business conducted by said financial institution on that day and is in accordance with a resolution adopted by the board of directors of the institution. Customers of any financial institution adopting such a deferral policy shall be notified of any such deferral of business by prominent notice posted in the lobby of the financial institution and by circularization in regular statement mailings at least 30 days prior to the effective date of any such deferral policy. Any financial institution changing its permissive closing day, temporarily or otherwise, shall post a notice of the change and the effective date thereof in a conspicuous place at each location affected by the change at least 30 days preceding the date of the change. Notwithstanding the foregoing, credit unions serving a limited membership base may establish uniform business hours and days consistent with the needs of their membership.

(Code 1933, 41A-501, enacted by Ga. L. 1978, p. 1714, 2; Ga. L. 1983, p. 602, 2.)

7-1-110.1. Posting notice of intent to close banking location.

Except in the case of an emergency closing, before a financial institution may close a banking location, it must post at such location in a conspicuous place at least 30 days in advance of such closing a notice of intent to close. Such notice must remain posted for at least 30 consecutive days. Customers of a banking location shall be considered to have received notice if the requirements of this Code section have been met.

(Code 1981, 7-1-110.1, enacted by Ga. L. 1999, p. 674, 1.)

7-1-111. Emergency closings.

Whenever it appears to the Governor that the welfare of the state or any region thereof or the welfare and security of any financial institution or the lives of the employees of the financial institution or the safety of the funds of depositors and property of the shareholders are endangered or placed in jeopardy by any impending or existing emergency or other catastrophe, including, but not limited to, economic crises, hurricanes, tornadoes, fire hazards, disruption or failure of utility, transportation, communication, or information systems, or civil disorders, the Governor may proclaim that a financial emergency exists and that any financial institution or type of financial institution shall be subject to special regulation as herein provided until the Governor, by a like proclamation, declares the period of such emergency to have terminated. The department may also declare financial emergencies in specific cases for cause shown, and its declaration shall remain in effect until terminated by the Governor or the commissioner, whichever occurs first.

(Code 1933, 14-1811, enacted by Ga. L. 1971, p. 812, 1; Code 1933, 41A-501, enacted by Ga. L. 1974, p. 705, 1; Code 1933, 41A-502, enacted by Ga. L. 1978, p. 1714, 4; Ga. L. 1999, p. 674, 1.)

7-1-111.1. Posting notice of intent to close banking location.

Repealed by Ga. L. 1999, p. 674, 1, effective July 1, 1999.

7-1-112. Business restrictions.

(a) During the period of or as a result of any financial emergency proclaimed by the Governor or declared by the department, or during any impending or existing emergency situation as described in Code [Section 7-1-111](#), the department, in addition to all of the powers conferred upon it by law, shall have the authority to order any one or more financial institutions to restrict all or any part of their business and to limit or postpone for any length of time the payment of any amount or proportion of the deposits in any of the departments of the financial institutions as it may deem necessary or expedient. The department may further regulate the payments of such financial institutions as to time and amount, as in its opinion the interest of the public or of such financial institutions or the depositors thereof may require.

(b) No liability or loss of any rights of any kind shall be incurred by any financial institution during any emergency period declared by the Governor or the department by reason of the delay in the payment of any item or by the return or transmission of any item or document if such delay is caused by orders of the Governor or the department, interruption of communication facilities, suspension of payments by another financial institution, war or emergency conditions, or other circumstances beyond the control of the financial institution if it exercises such diligence as the circumstances require.

(Code 1933, 14-1812, enacted by Ga. L. 1971, p. 812, 2; Code 1933, 41A-501, enacted by Ga. L. 1974, p. 705, 1; Code 1933, 41A-503, enacted by Ga. L. 1978, p. 1714, 5; Ga. L. 1999, p. 674, 2.)

7-1-113. Voluntary dissolution prior to commencement of business.

(a) A financial institution which has not transacted any business as a financial institution other than organizational business may propose to dissolve by the affirmative vote of shareholders entitled to cast at least two-thirds of the votes which all shareholders are entitled to cast on the plan and by delivering to the department articles of dissolution which shall be executed by two duly authorized officers or shareholders under the seal of the financial institution and which shall contain:

(1) The date of incorporation of the financial institution;

(2) A statement that it has not transacted any business as a financial institution other than organizational business;

(3) A statement that all liabilities of the financial institution have been paid or provided for;

(4) A statement that all amounts received on account of capital stock, paid-in capital, and expense fund, less amounts disbursed for expenses, have been returned to the persons entitled thereto; and

(5) The number of shares entitled to vote on the dissolution and the number of shares voted for and against it, respectively.

(b) The articles of dissolution shall be delivered in duplicate to the department together with the filing fee required by Code [Section 7-1-862](#). If the department is satisfied that the financial institution has not conducted any business other than organizational business and, if it finds that the articles of dissolution satisfy the requirements of this chapter, it shall deliver them with its written approval to the Secretary of State and notify the financial institution of its action. If the department shall disapprove the articles of dissolution, it shall give written notice to the financial institution of its disapproval and a general statement of the reasons for its decision. The decision of the department shall be conclusive, except as it may be subject to judicial review under Code [Section 7-1-90](#).

(c) If the department determines that a financial institution has not conducted any business other than organizational business and, if articles of dissolution satisfying the requirements of this chapter are not delivered in duplicate to the department together with the filing fee as required by Code Section 7-1-862, the department may make written demand upon the financial institution to immediately provide articles of dissolution or to provide cause why such dissolution should not be pursued directly by the department. If the financial institution fails to provide articles of dissolution as required within 60 days from the date of demand by the department, the department may seek dissolution of the financial institution in organization directly from the Secretary of State's office.

(Code 1933, 41A-502, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1975, p. 445, 13; Code 1933, 41A-504, as redesignated by Ga. L. 1978, p. 1714, 3; Ga. L. 1993, p. 917, 1.)

7-1-114. Voluntary dissolution after commencement of business.

(a) A financial institution which has commenced business may elect to dissolve voluntarily upon:

(1) Adoption by the vote required of its shareholders under subsection (b) of this Code section of:

(A) A plan of dissolution involving both a provision for assumption of its liabilities by another financial institution and a provision for continuance of its business if such assumption of its liabilities is not effected; or

(B) Any other plan of dissolution providing for full payment of its liabilities; and

(2) Approval by the department of the plan of dissolution after application for approval thereof in a manner prescribed by the department.

(b) Adoption of the plan by the shareholders of the financial institution shall require the affirmative vote of the shareholders entitled to cast at least two-thirds of the votes which all shareholders are entitled to cast on the plan and, if any class of shareholders is entitled to vote on the plan as a class, of the holders of at least two-thirds of the outstanding shares of such class, provided, in the case of a credit union, adoption of the plan may be made by the affirmative vote of at least two-thirds of the members present and entitled to vote at a meeting duly called for that purpose.

(c) Upon receipt of an application for approval of a plan of dissolution, the department shall conduct such investigation as it may deem necessary to determine whether:

(1) The plan satisfies the requirements of this chapter;

(2) The plan adequately protects the interests of depositors, other creditors, and shareholders; and

(3) If the plan involves an assumption of liabilities by another financial institution, such assumption would be consistent with adequate and sound banking and in the public interest on the basis of factors substantially similar to those set forth in Code [Section 7-1-534](#).

(d) Within 90 days after receipt of the application, the department shall approve or disapprove the application on the basis of its investigation and shall immediately give to the financial institution written notice of its decision and, in the event of disapproval, a general statement of the reasons for its decision. The decision of the department shall be conclusive, except as it may be subject to judicial review under Code [Section 7-1-90](#).

(Ga. L. 1919, p. 135, art. 14, 1, 2, 10; Code 1933, 13-1501, 13-1502, 13-1510; Ga. L. 1967, p. 597, 1; Code 1933, 41A-503, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1977, p. 730, 2; Code 1933, 41A-505, as redesignated by Ga. L. 1978, p. 1714, 3.)

7-1-115. Winding up voluntary dissolution proceedings.

(a) The board of directors shall have full power to wind up and settle the affairs of a financial institution in voluntary dissolution proceedings.

(b) Within 30 days after the department's approval of voluntary liquidation and dissolution, the financial institution shall give notice of its dissolution:

(1) By mail to each depositor and creditor (except those as to whom the liability of the financial institution has been assumed by another financial institution pursuant to the plan), including a statement of the amount shown by the books of the financial institution to be due to such depositor or creditor and a demand that any claim for a greater amount be filed with the financial institution before a specified date at least 60 days after the date of notice;

(2) By mail to each lessee of a safe-deposit box and each customer for whom property is held in safe deposit (except those as to whom the liability of the financial institution has been assumed by another financial institution pursuant to the plan), including a demand that all property held in a safe-deposit box or held in safe deposit by the financial institution be withdrawn by the person entitled thereto before a specified date at least 60 days after the date of the notice;

(3) By mail to each person interested in funds held in a fiduciary account or other representative capacity;

(4) By a conspicuous posting at each office of the financial institution; and

(5) By such publication as the department may prescribe.

(c) As soon as feasible after the department's approval of voluntary liquidation and dissolution, the financial institution shall resign all of its fiduciary appointments and take such action as may be necessary to settle its fiduciary accounts.

(d) Except where liabilities are to be assumed by another financial institution:

(1) All claims of depositors and creditors shall be paid promptly after the date specified in the notice given under paragraph (1) of subsection (b) of this Code section, and unearned portions of rentals for safe-deposit boxes shall be rebated to the lessee thereof;

(2) Safe-deposit boxes whose contents have not been removed after the date specified in the notice given under paragraph (2) of subsection (b) of this Code section shall be opened under the supervision of the department and the contents placed in sealed packages which, together with unclaimed property held by the financial institution in safe deposit, shall be transmitted to the department to be held by it subject to Article 5 of [Chapter 12](#) of [Title 44](#), provided that the department while holding such property may take such actions as it deems appropriate to protect the interests of the owner including reducing such property to cash;

(3) After payment of amounts due to all known depositors and creditors, unclaimed amounts due to depositors and creditors shall be paid through the department and held by it subject to Article 5 of [Chapter 12](#) of [Title 44](#); and

(4) Assets remaining after the performance of all obligations of the financial institution under this subsection and subsection (c) of this Code section shall be distributed to its shareholders

according to their respective rights and preferences. Partial distributions to shareholders may be made prior to such time only if and to the extent approved by the department.

(e) During the course of dissolution proceedings, the financial institution shall make such reports as the department may require and shall continue to be subject to the provisions of this chapter concerning examinations and investigations of financial institutions. Furthermore, during the course of a voluntary dissolution, the financial institution with the written permission of the department may elect to use provisions of Article 14 of [Chapter 2](#) of [Title 14](#) that are not in conflict with this chapter.

(f) If, at any time during the course of dissolution proceedings, the department finds that the assets of the financial institution will not be sufficient to discharge its obligations, the department may then or at any time thereafter take possession of the business and property of the financial institution and complete the dissolution in accordance with this chapter.

(Ga. L. 1919, p. 135, art. 14, 3-6; Code 1933, 13-1504, 13-1505, 13-1506; Ga. L. 1967, p. 597, 1; Code 1933, 41A-504, enacted by Ga. L. 1974, p. 705, 1; Code 1933, 41A-506, as redesignated by Ga. L. 1978, p. 1714, 3; Ga. L. 1989, p. 14, 7; Ga. L. 2003, p. 843, 3.)

7-1-116. Articles of dissolution where business commenced; procedure if not filed.

(a) When all the liabilities of the financial institution have been discharged and all of its remaining assets have been distributed to its shareholders pursuant to Code [Section 7-1-115](#) or its liabilities have been assumed by another financial institution, the articles of dissolution shall be signed by two duly authorized officers of the financial institution under its seal and shall contain:

(1) The name of the financial institution and the post office address of its principal place of business;

(2) A statement that the department has previously approved a plan to dissolve the institution and the date on which such approval was transmitted to the Secretary of State;

(3) A statement that all liabilities of the financial institution have been discharged and that the remaining assets of the financial institution have been distributed to its shareholders or that its liabilities have been assumed as provided in this chapter; and

(4) A statement that there are no actions pending against the financial institution.

(b) The articles of dissolution shall be delivered to the department in duplicate together with the filing fee required by Code [Section 7-1-862](#). If the department finds that the articles satisfy the requirements of this chapter, it shall deliver its written approval to the Secretary of State with a copy of the articles of dissolution attached.

(c) Where a financial institution fails to file articles of dissolution within 180 days after the department determines that dissolution proceedings have been completed as provided in this part, the department may cause notice to be published in accordance with this chapter to the effect that persons having claims against the financial institution should notify the department within 30 days of the date of initial publication. If the department receives no such notifications or if claims are otherwise satisfied, the department shall notify the Secretary of State that the articles of incorporation or charter are no longer valid and should be promptly canceled of record in the offices of the Secretary of State.

(Ga. L. 1919, p. 135, art. 14, 7, 9; Code 1933, 13-1507, 13-1509; Ga. L. 1967, p. 597, 1; Code 1933, 41A-505, enacted by Ga. L. 1974, p. 705, 1; Code 1933, 41A-507, as redesignated by Ga. L. 1978, p. 1714, 3; Ga. L. 1980, p. 972, 3; Ga. L. 1993, p. 917, 2.)

7-1-117. Certificate of dissolution.

If all applicable fees, charges, and taxes required by law have been paid upon the receipt of the department's approval, under Code [Section 7-1-113](#) or [7-1-116](#), of the articles of dissolution, the Secretary of State shall immediately issue to the financial institution a certificate of dissolution with the approved articles of dissolution attached thereto and shall retain a copy of such certificate, the approval of the department, and the articles; and the existence of the financial institution shall cease.

(Ga. L. 1919, p. 135, art. 14, 12; Code 1933, 13-1512; Ga. L. 1967, p. 597, 1; Code 1933, 41A-506, enacted by Ga. L. 1974, p. 705, 1; Code 1933, 41A-508, as redesignated by Ga. L. 1978, p. 1714, 3.)

PART 6

NAMES, REGISTERED OFFICES, AND ADVERTISING

7-1-130. Permissible names.

(a) The name of a financial institution shall not contain the words "Government," "Official," "Federal," "National," or "United States" or any abbreviation of any such words and shall not in the opinion of the department:

(1) Be indistinguishable from the corporate name of another financial institution conducting a banking business in this state as reflected in the records of the department; or

(2) Contain any word which may lead to the conclusion that the financial institution is authorized to perform any act or conduct any business which it is unauthorized or forbidden to perform by law, its articles, or otherwise.

(b) A financial institution may, without regard to subsection (a) of this Code section, use:

(1) Its name in use on April 1, 1975;

(2) A name in use on April 1, 1975, by another financial institution which is adopted by:

(A) A financial institution which is the resulting institution in a plan of merger or consolidation to which the institution using the name is a party; or

(B) A financial institution which is incorporated under this chapter in pursuance of a plan of segregating the banking business and the trust business of the institution using the name; or

(3) A name of another financial institution already transacting business with the consent of the latter institution, provided that the names are distinguishable in the records of the Secretary of State.

(Code 1933, 41A-601, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1998, p. 795, 10.)

7-1-131. Reservation of name.

(a) The exclusive right to use a corporate name permitted to be used by a financial institution may be reserved by a person intending to incorporate such an institution, by a corporation intending to engage in business in this state as a financial institution, by a financial institution intending to change its name, or by a national bank, a federal credit union, or a savings and loan association intending to convert into a financial institution organized under the laws of this state.

(b) Such reservation may be made by filing with the department a letter form application to reserve a specified name. If the department concludes that the use of the name complies with the requirements of Code [Section 7-1-130](#), is otherwise consistent with the purposes and provisions of this chapter, and is distinguishable upon the records of the Secretary of State from the name of any other corporation, limited partnership, or professional association, it shall approve the name and notify the Secretary of State to issue such name reservation.

(c) The right to the exclusive use of a name reserved pursuant to this Code section may be transferred to anyone who would be entitled to reserve such name under this Code section except for such prior reservation by filing with the department a notice of the transfer which shall be executed by the transferor who reserved the name and which shall set forth the name and address of the transferee. The department shall send a copy of such notice to the Secretary of State.

(d) Notwithstanding any other provisions of law, the process set forth in this Code section shall be the exclusive process for reserving the corporate name of a financial institution.

(Code 1933, 41A-602, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1975, p. 445, 14; Ga. L. 1978, p. 1717, 2; Ga. L. 1989, p. 1257, 1; Ga. L. 1998, p. 795, 11.)

Cross references. - Use of corporate names by Secretary of State corporations, [14-4-22](#), [14-4-25](#).

7-1-132. Registered agent and office.

(a) Every financial institution shall continuously maintain a registered agent and a registered office. Such agent and office shall be located in a county in this state where the financial institution is authorized to conduct its general business; and, in the case of financial institutions subject to Chapter 2 or 3 of [Title 14](#), such agent and office shall be the same as is required under those chapters.

(b) Not later than September 30, 1998, every financial institution shall file with the department a statement designating the name of its registered agent and the place of its registered office by street, post office address, and county. In the event of the failure of an institution to file said statement, the registered agent shall be the chief executive officer of the bank and the registered office of the institution shall be the business address where the chief executive officer is located.

(c) A financial institution may change, and a new financial institution may establish, its registered agent and the location of its registered office by filing a statement with the department designating the name of the new registered agent or the street, post office address, and county of its new registered office or both, provided that no change in the registered agent or office shall affect actions or proceedings commenced before the time of said change.

(d) Nothing contained in this Code section shall affect the obligation of a financial institution to file information with the Secretary of State.

(Code 1933, 41A-603, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1998, p. 795, 12.)

7-1-133. Prohibited advertising.

(a) No person or corporation doing business in this state shall advertise in or through any newspaper, radio, television, letters, circulars, billheads, or in any way or through any medium seeking to induce any person to purchase an instrument which is purported to be insured or guaranteed in a manner comparable to an insured deposit or share account in any financial institution authorized to have such deposits or accounts when in fact such instrument does not possess comparable insurance coverage as determined by the department. Whenever any person, firm, or corporation doing business in this state shall compare, in any such advertising media, an investment or a return on an investment, except an investment or return on an investment in the form of a deposit or share account, to a deposit or share account or a return on a deposit or share account in an authorized financial institution, it shall be clearly stated in such advertising or

solicitation that the investment is not a deposit insured by a public body of the United States or of this state.

(b) No person or corporation shall use the terms "savings," "savings account," "deposit," or "withdrawal" or any equivalent thereof in any advertisement as above described in subsection (a) of this Code section indicating reference to instruments issued by or to be issued by the person or corporation.

(Code 1933, 13-204.2, enacted by Ga. L. 1973, p. 534, 1; Code 1933, 41A-604, enacted by Ga. L. 1974, p. 705, 1.)

7-1-134. Unfair competition, unfair trade practice, and trade name and trademark laws unaffected.

Nothing in this chapter shall abrogate or limit the law as to unfair competition or unfair trade practice nor derogate from the common law or principles of equity or the statutes of this state or of the United States with respect to the right to acquire and protect trade names and trademarks.

(Code 1933, 41A-605, enacted by Ga. L. 1974, p. 705, 1.)

PART 7

RECEIVERSHIP POWERS AND PROCEDURES GENERALLY

7-1-150. Taking of possession by department; cumulative remedies.

(a) The department may in its discretion take possession of the business and property of any financial institution whenever such financial institution:

(1) Is insolvent or in an unsafe or unsound condition to transact its business;

(2) Has generally suspended payment of its obligations, without authority of law;

(3) Has violated any court order, statute, rule, or regulation, or its articles and the department determines that its continued control of its own affairs threatens injury to the public, the financial community, or its depositors and other creditors; or

(4) Requests the department, by its board of directors, to take possession for the benefit of depositors, other creditors, and shareholders.

(b) The right of the department to take possession of a financial institution shall be in addition to and cumulative with all other rights, remedies, and powers of the department. The department may, in its discretion before or after taking possession, petition the principal court for appointment of a receiver pursuant to subsection (c) of Code [Section 7-1-151](#).

(Ga. L. 1919, p. 135, art. 7, 1; Ga. L. 1925, p. 165, 10; Code 1933, 13-801, 13-802, 25-122; Ga. L. 1935, p. 114, 1; Ga. L. 1937-38, Ex. Sess., p. 307, 7; Ga. L. 1943, p. 279, 1; Ga. L. 1956, p. 742, 4; Ga. L. 1960, p. 977, 1; Ga. L. 1962, p. 74, 3; Ga. L. 1967, p. 597, 2; Ga. L. 1968, p. 465, 8; Code 1933, 41A-701, enacted by Ga. L. 1974, p. 705, 1.)

7-1-151. Status of department as receiver; restrictions on appointment.

(a) Upon taking possession of a financial institution, the department shall automatically become the receiver of said institution with all rights, powers, and duties conferred by this chapter and, to the extent not in conflict with this chapter, all rights, powers, and duties of a receiver appointed pursuant to Chapters 5 and 8 of [Title 9](#), relating to injunctions and receivers.

(b) Except as provided in subsection (c) of this Code section, no court shall appoint anyone but the department as receiver of a financial institution. Whenever any court, at the instance of the department, a depositor, a shareholder, or other person entitled by law to institute such proceedings, shall determine that a receiver should be appointed, for any reason whatsoever, it shall appoint the department as such receiver. When thus appointed receiver by a court, the department shall serve in the same manner and with the same limitations and shall have the same rights, powers, and duties as when it becomes receiver by operation of law and without appointment by any court. No court shall impose upon the department as receiver any duties or restrictions in conflict with this chapter.

(c) In any proceeding for the appointment of a receiver of an institution whose deposits or shares are insured by a public body of the United States, the court may upon the recommendation of the department (whether or not the department is a party) appoint said public body or its administrator as receiver. If said public body or its administrator accepts the appointment, it or he or she shall have all the rights, powers, and duties of the department as receiver under this chapter and all the rights, powers, and duties as conferred by other applicable law. The public body or its administrator may act as receiver without bond.

(Code 1933, 41A-702, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 2005, p. 826, 6/SB 82.)

7-1-152. General assignment prohibited; taking of possession upon request.

No financial institution shall make a general assignment of its business and property for the benefit of its creditors by the appointment of an assignee or a trustee or otherwise. In lieu of the

power to make an assignment for the benefit of creditors, a financial institution may request the department to take possession as provided in this part. In such cases, the department shall take possession and become receiver in the same manner and subject to the same provisions of this chapter as when it takes possession of the business and property of a financial institution without the request of such financial institution.

(Ga. L. 1919, p. 135, art. 7, 2, 4; Code 1933, 13-804; Code 1933, 41A-703, enacted by Ga. L. 1974, p. 705, 1.)

7-1-153. Posting of notice of taking possession.

The department, upon taking possession of the business and property of a financial institution as receiver, shall post notice of such fact on the front door of all offices of the institution open to the public for the transaction of business in person.

(Code 1933, 41A-704, enacted by Ga. L. 1974, p. 705, 1.)

7-1-154. Certificate of possession; naming deputy receiver.

The department shall immediately after taking possession file with the principal court a certificate to be known as the certificate of possession, setting forth the facts on the basis of which it has taken possession. The certificate shall state the name of the deputy receiver, if any, whom the department, pursuant to this chapter, appoints to take charge of the affairs of the financial institution, together with the duties of such deputy receiver. If the department does not appoint a deputy receiver prior to the date of the filing of the certificate of possession or if it appoints a new deputy receiver or an additional one or if it adds to the duties of the deputy receiver, it shall file a supplement to the certificate of possession setting forth such acts. The certificate of possession and any supplement thereto shall be listed in the judgment index in the name of the financial institution as defendant and of the department as plaintiff.

(Ga. L. 1919, p. 135, art. 7, 5; Ga. L. 1927, p. 195, 2; Code 1933, 13-805; Code 1933, 41A-705, enacted by Ga. L. 1974, p. 705, 1.)

7-1-155. Injunction to restrain department.

Any financial institution of whose business or property the department has taken possession as receiver may, at any time within ten days after the department has become receiver, apply to the principal court for an order requiring the department to show cause why it should not be enjoined from continuing as receiver. Service may be made in such action by serving the commissioner personally or by leaving a copy with the deputy in charge of his office in the department or by serving the deputy receiver appointed by the department to manage the affairs of such financial institution. The court shall, after a hearing upon the merits, either dismiss the application or order the department to surrender to the financial institution possession of its business and property; but no such injunction shall issue where the department has been appointed receiver by action of a court of competent jurisdiction or by action of the financial institution itself, in accordance with this chapter. Such application for injunction may in the discretion of the court be heard at any time after service as provided in this Code section, with the right to either party by appeal, as in other cases of applications for temporary injunction, to carry said case to the Supreme Court for review.

(Ga. L. 1919, p. 135, art. 7, 8; Code 1933, 13-810; Code 1933, 41A-706, enacted by Ga. L. 1974, p. 705, 1.)

7-1-156. Supervision of department by court.

(a) Except as otherwise provided in this chapter, the department, when it has taken possession of a financial institution, shall be responsible to the principal court and not to any other court. All actions against the department or any official of it involving a financial institution which is or has been in the department's possession shall be brought in the principal court.

(b) The principal court shall sit as a court of equity. It shall have the power, upon petition of the department, to make and enforce any appropriate order to enable the department, with the utmost dispatch, to discharge its duties in connection with the business and property of any financial institution of which it has taken possession.

(c) The court shall grant to any party against whom an order is sought the right to appear, within ten days after notice is given, to show cause why the order should not be made. The court shall have the power, at the end of the ten-day period, ex parte if the other party does not appear to show cause, or upon the merits if the party does appear, to issue the aforementioned order.

(d) Whenever this chapter empowers the department as receiver to take any action with the leave of court, the department shall give the financial institution and its creditors, depositors, and shareholders ten days' notice of its proposed action before seeking the approval of the court, provided that the court may, upon cause shown, shorten the time or dispense with such notice or direct that it be sent to only specified parties. In determining what, if any, notice shall be provided, the court may consider, among other factors, the necessity for immediate action in the interest of the financial institution as a whole and whether the interests of potential addressees are actually at stake. Where parties object to the proposed action of the department, the court shall allow them an opportunity to present their views appropriate to the nature of the case.

(Ga. L. 1927, p. 195, 15-A; Code 1933, 13-809; Code 1933, 41A-707, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1975, p. 445, 15.)

7-1-157. General powers of department in possession.

(a) The department in possession shall be vested with all the rights, powers, and duties of such financial institution; with the title or the right to possession of all property to which the financial institution has title or the right to possession, including debts due, and liens and other security therefor; and with the financial institution's rights of action or redemption. This shall be so whether such property and debts due, such liens or other security therefor, or such rights of action or redemption are held in the name of such financial institution or in the name of some other corporation or person.

(b) The department shall be the representative of the creditors of the financial institution and shall be entitled, as such, to have vacated and set aside, for the benefit of the creditors, any judgment, execution, attachment, sequestration, payment, security interest, assignment, transfer,

conveyance, or encumbrance which could have been avoided by any of the creditors or by which one creditor is given a preference over another. As used in this subsection, the term "preference" means all transfers of the assets of a financial institution made or suffered, either after or in contemplation of insolvency, for the purpose of allowing a creditor to gain more than his ratable share of the assets of the institution as determined by Code [Section 7-1-202](#).

(c) The department is authorized to collect all moneys due to the financial institution and to do such other acts as are necessary to conserve its assets and business. In exercising its power as receiver, the department shall give first consideration to the interests of depositors and other creditors as a whole and shall give consideration to the interests of shareholders and other owners only when depositors and other creditors have received or are assured of full payment of their claims.

(d) The department as receiver shall have the power to execute in its name or in the name of the financial institution any instrument necessary or proper to effectuate its powers or perform its duties as receiver. Any instrument executed in the name of the institution pursuant to the authority given by this subsection shall be valid and effectual for all purposes as though executed by proper officers of the institution by authority of its board of directors or other governing body.

(Ga. L. 1919, p. 135, art. 7, 3; Ga. L. 1922, p. 63, 1; Code 1933, 13-803, 13-808; Code 1933, 41A-708, enacted by Ga. L. 1974, p. 705, 1.)

7-1-158. Appointment of deputy receivers, counsel, and other assistants.

The department may appoint one or more official agents, to be known as deputy receivers, to assist it in the management, reorganization, consolidation, liquidation, or distribution of the assets and affairs of any financial institution of which it has taken possession as receiver. The department may delegate to each deputy receiver any duty imposed upon or any right or power granted to it as receiver. The department may also employ such other assistants as it deems necessary, including such assistant attorneys general or other attorneys as may be appointed by the Attorney General or independently retained by the department in connection with the receivership. The department may also retain, to assist it in the management, reorganization, consolidation, liquidation, or distribution, any officer or other employee of the financial institution of which it has taken possession.

(Ga. L. 1919, p. 135, art. 7, 9; Ga. L. 1931, p. 7, 91; Code 1933, 13-811, 13-812; Code 1933, 41A-709, enacted by Ga. L. 1974, p. 705, 1.)

7-1-159. Suspension or continuation of business.

The department is authorized, upon taking possession of the business and property of a financial institution as receiver, to continue or to suspend the business for such period as it may deem necessary to enable it to determine whether to surrender such possession to the financial

institution, to authorize a merger or consolidation, to liquidate the affairs of such financial institution, or to take such other action as is authorized by law.

(Code 1933, 41A-710, enacted by Ga. L. 1974, p. 705, 1.)

7-1-160. Determination to liquidate; filing of supplemental certificate.

The department shall, within six months after the date on which it takes possession of any financial institution as receiver, determine whether or not to liquidate the business and property and distribute the assets of the financial institution. If it shall determine to liquidate, it shall forthwith file with the principal court a supplement to the certificate of possession, setting forth this determination. The department shall then proceed to liquidate the affairs of the financial institution with as much dispatch as shall appear to be expedient under the circumstances.

(Code 1933, 41A-711, enacted by Ga. L. 1974, p. 705, 1.)

7-1-161. Powers and duties of department before and after determination to liquidate.

Except where otherwise specifically provided, all powers and duties granted by this chapter to the department in possession of the business and property of a financial institution as receiver may be exercised by it both before and after its formal determination, pursuant to this chapter, to liquidate the affairs of such financial institution.

(Code 1933, 41A-712, enacted by Ga. L. 1974, p. 705, 1.)

7-1-162. Inventory and appraisement.

(a) When the department has taken possession of the business and property of a financial institution as receiver, it shall forthwith prepare a complete and detailed inventory of the assets of such financial institution. The inventory shall be verified by oath or affirmation of the commissioner or other person making it.

(b) As soon as expedient after taking possession, the department shall cause a complete appraisement of the assets of the financial institution to be made, in duplicate, under oath or affirmation, by not less than two nor more than three disinterested appraisers selected by it. Such appraisement shall be included upon the same document or documents as the inventory. The value of the assets shall be computed in the appraisement as of the date on which the department took possession.

(c) The original and duplicate of the inventory and appraisement shall be filed in the office of the commissioner. However, if the commissioner shall determine, in accordance with this

chapter, to liquidate the affairs of the financial institution, he shall immediately, after the determination to liquidate, file the duplicate inventory and appraisal with the principal court.

(d) When the department takes possession of business and property of a financial institution which in the two immediately preceding reports of condition filed in accordance with subsection (a) of Code [Section 7-1-68](#) reported assets of less than \$150,000.00, the department shall not be required to secure an appraisal of the assets of the financial institution under subsection (b) of this Code section or to file an appraisal of the assets with a determination to liquidate under subsection (c) of this Code section, unless the principal court, upon application by a shareholder or creditor, shall otherwise order.

(Ga. L. 1919, p. 135, art. 7, 12; Code 1933, 13-814; Code 1933, 41A-713, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1976, p. 1681, 1.)

7-1-163. Notice to holders of assets; power of court to order transfer.

(a) Upon becoming receiver, the department shall forthwith give notice in writing of such fact to all corporations and persons having custody or possession of any assets or other property of the financial institution in receivership or of any other property with respect to which such institution has a right to possession or custody for any purpose whatsoever.

(b) The principal court shall have the power, except in cases where a jury trial is requested, upon petition of the department, to order any corporation or person which has custody or possession of assets or other property to which such financial institution shall have the right of custody or possession, for any reason whatsoever, to transfer or convey such property to the department and to execute and deliver any instrument necessary to accomplish that purpose.

(c) Any person aggrieved by an order of the court may request a jury trial to determine the validity of his claim.

(Ga. L. 1919, p. 135, art. 7, 5; Ga. L. 1927, p. 195, 2; Code 1933, 13-805; Code 1933, 41A-714, enacted by Ga. L. 1974, p. 705, 1.)

7-1-164. Power of department to borrow money.

The department may, without leave of court, borrow money from any federal or state public body or from any person or corporation and grant as security therefor any real or personal property of the financial institution for the purpose of facilitating the liquidation, reorganization, or rehabilitation of the financial institution. The repayment of money borrowed under this Code section and interest thereon shall be considered an expense of administration under Code [Sections 7-1-197](#) and [7-1-202](#).

(Code 1933, 41A-715, enacted by Ga. L. 1974, p. 705, 1.)

7-1-165. Surrender of burdensome assets.

The department may, with leave of court, surrender to the financial institution real or personal property which it finds to be burdensome and of no advantage to the depositors or other creditors of the institution. It may likewise, with leave of court, convey title to any holder of a mortgage, security deed, security interest, or a lien against property in its possession, where it shall appear that to continue to hold such property is burdensome and of no advantage to the financial institution, its depositors, or other creditors.

(Code 1933, 41A-716, enacted by Ga. L. 1974, p. 705, 1.)

7-1-166. Compromise of claims; extension of mortgages or notes.

(a) The department may, with leave of court, compound or compromise any debt, claim, or judgment due to the financial institution in receivership and discontinue any action or other proceeding pending therefor.

(b) The department may, without leave of court, enter into an agreement in writing upon such terms as shall seem reasonable to it to extend, for a period not to exceed three years, the maturity of any mortgage or security deed obligation in its possession. However, the department shall not enter into any agreement extending any such obligation which shall have been pledged by the financial institution of which it is in possession as receiver unless it shall first obtain the written consent of the pledgee of such mortgage to such extension. The department may likewise renew or extend, for limited periods, other notes and drafts held by the financial institution.

(Ga. L. 1919, p. 135, art. 7, 7; Ga. L. 1922, p. 63, 1; Code 1933, 13-807, 13-808; Code 1933, 41A-717, enacted by Ga. L. 1974, p. 705, 1.)

7-1-167. Payment of mortgages and liens; protection of equities.

The department may, with leave of court, pay off all mortgages, security deeds, security agreements, and liens of or upon any real or personal property which belong to the financial institution. It may, without leave of court, purchase, at a judicial sale or at any sale authorized by an order of a court of competent jurisdiction, any real or personal property in order to protect any equity which the financial institution has in such real or personal property.

(Ga. L. 1922, p. 63, 1; Code 1933, 13-808; Code 1933, 41A-718, enacted by Ga. L. 1974, p. 705, 1.)

7-1-168. Sales of real property.

The department may, with leave of and upon the terms and conditions prescribed by the court, sell any real property of the financial institution of which it is in possession as receiver. The order of the court authorizing such sale shall state whether the sale shall be entirely for cash or partly for cash and partly for evidences of indebtedness and whether it shall be public or private. Each such sale of real property shall be confirmed by the court if all the terms and conditions of its order authorizing such sale have been complied with. If the real property is located in this state but in a county other than the county of the principal court, the department shall file a certified copy of all orders relating to the property in the office of the clerk of the superior court of the county where the real property is located.

(Ga. L. 1919, p. 135, art. 7, 7; Code 1933, 13-807; Code 1933, 41A-719, enacted by Ga. L. 1974, p. 705, 1.)

7-1-169. Leases of property.

The department may, without leave of court, enter into leases for a period not to exceed one year of real or personal property belonging to the financial institution in receivership. It may, with leave of court, enter into such leases for a period not to exceed ten years, upon the terms and under the conditions prescribed by the order of the court.

(Code 1933, 41A-720, enacted by Ga. L. 1974, p. 705, 1.)

7-1-170. Sales or exchanges of securities; sales of liens or personal property.

(a) The department may, without leave of court, sell on any stock exchange or otherwise, at such times and in such manner as it may deem advisable, listed or unlisted securities which belong to the financial institution in receivership.

(b) The department may, without leave of court, exchange listed or unlisted securities for other securities of the corporation issuing the securities or of a corporation which has merged or consolidated with or has taken over such corporation.

(c) The department may, without leave of court, sell any mortgage or other lien upon real property or any judgment, at such times and in such manner as it shall deem to be advisable.

(d) Except as otherwise specifically provided by this chapter, the department may, without leave of court, sell:

- (1) At public sale; or

(2) At private sale, for a net consideration not below the amount at which such personal property has been valued in the appraisal required by this chapter,

any personal property which belongs to the financial institution in receivership or which such financial institution has the power to sell. It may, with leave of court, sell such personal property at private sale upon such terms and under such conditions as the court shall prescribe to be commercially reasonable.

(Ga. L. 1919, p. 135, art. 7, 7; Code 1933, 13-807; Code 1933, 41A-721, enacted by Ga. L. 1974, p. 705, 1.)

7-1-171. Deposit of moneys by department.

All moneys received by the department as receiver of a financial institution except those moneys necessary to administer the liquidation shall be deposited by it in interest-bearing accounts with one or more institutions authorized by law to receive deposits and subject to the supervision of either federal or state regulatory authorities. It shall require of such depository security therefor, in such amount and of such nature as the department shall deem adequate.

(Ga. L. 1919, p. 135, art. 7, 22; Code 1933, 13-824; Code 1933, 41A-722, enacted by Ga. L. 1974, p. 705, 1.)

7-1-172. Disposition of property in safe-deposit vault or held for safekeeping.

(a) The department may, any time after taking possession of a financial institution as receiver, give written notice to anyone claiming or appearing on the books of such financial institution to be the owner or to be entitled to the possession of any personal property left with such financial institution as bailee for safekeeping or depository for hire and to anyone appearing on the books of the financial institution to be the lessee of any safe, vault, or safe-deposit box, notifying such bailor, depositor, or lessee, respectively, to remove all such personal property within the period fixed by the notice, provided that such period shall in no case be less than 60 days after the date of the notice.

(b) At the expiration of such period, if the lessee of a safe, vault, or safe-deposit box has not removed the contents thereof, the department may open such safe, vault, or safe-deposit box in the presence of a notary public not an officer or employee of the financial institution or of the department. The contents, if any, of such safe, vault, or safe-deposit box shall then be sealed and marked by such notary with the name and address of the lessee in whose name such safe, vault, or safe-deposit box appeared on the books of the financial institution and with a list and description of the property therein. The department shall hold such property until it is delivered to the owner or those claiming through him or is disposed of under Article 5 of [Chapter 12 of Title 44](#) and, while holding such property may take such action as it deems appropriate to protect the interest of the owner therein, including reducing the property to cash.

(c) The department shall follow the same procedure and have the same powers with regard to the property left with the financial institution as bailee for safekeeping or depository for hire and not called for within the period specified by the notice.

(d) The contract of bailment, deposit, or lease, if any, shall be considered at an end upon the date designated by the commissioner for the removal of the property therein. The amount of unearned rent or charges, if any, paid by the bailor, depositor, or lessee, shall become a debt of the financial institution.

(Code 1933, 41A-723, enacted by Ga. L. 1974, p. 705, 1.)

7-1-173. Bringing or defending actions.

(a) For the purpose of executing any of the powers and performing any of the duties respectively conferred or imposed upon it, as receiver, by this chapter, the department may, in its name as receiver of such financial institution, prosecute any action at law or in equity in any court of this state or of any other state or in any federal court, whether or not such action is pending on behalf of the financial institution at the time it takes possession. It may likewise defend any action at law or in equity pending against the financial institution at the time it takes possession. The department may, in its name as receiver of a corporation, institute and maintain any action which any director, officer, or such corporation or any shareholder or creditor thereof could have instituted or maintained.

(b) Notwithstanding the provisions of other laws to the contrary, the statute of limitations on all causes of action which may accrue to any financial institution over whose affairs the department is receiver shall be extended for a period of six months.

(Ga. L. 1922, p. 63, 1; Code 1933, 13-808; Code 1933, 41A-724, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1984, p. 949, 2.)

7-1-174. Surrender of possession by department prior to final liquidation; special liquidations and reorganizations.

(a) The department may, upon conditions approved by it, surrender possession of a financial institution in receivership at any time prior to final liquidation and distribution under the following circumstances:

(1) It may surrender possession to the financial institution itself when it finds the institution to be in a safe and sound condition to resume its business; or

(2) It may surrender to the financial institution itself or to any other corporation or person possession of all or part of the business, property, moneys, credits, or other assets of the financial institution in receivership, to permit to be carried into effect a special plan of liquidation, reorganization, or rehabilitation under the requirements of this Code section.

(b) Before the department may surrender possession of any of the assets of a financial institution pursuant to a special plan of liquidation, such plan shall have been approved by the principal court and a majority of creditors (including depositors) of the institution, both as to number of creditors and as to the amount of claims.

(c) Before the department may surrender possession of any of the assets of a financial institution pursuant to a special plan of reorganization or rehabilitation, such plan shall have the same approvals as required under subsection (b) of this Code section and, in addition, shall be approved by the affirmative vote of the holders of a majority of shares entitled to vote thereon.

(d) Whenever the department shall surrender possession under this Code section, it shall forthwith file with the principal court a supplement to the certificate of possession, setting forth in detail all the conditions and purposes of such surrender. This supplement shall be indexed in a manner which will, insofar as necessary, satisfy the prior record of the certificate of possession.

(e) Whenever the department shall, under this Code section, surrender possession of the entire business and property of a financial institution in receivership, it shall file in the principal court an account, which shall correspond to any other final account under this chapter. Such account shall be subject to exceptions by shareholders, or depositors, or other creditors, and to confirmation by the court, in the same manner as is provided by this chapter for any account filed by the department as receiver.

(Code 1933, 41A-725, enacted by Ga. L. 1974, p. 705, 1.)

7-1-175. Ability of department to reject executory contract or lease of financial institution in receivership.

Within 180 days after the department takes possession of a financial institution, the department, as receiver, may at its election reject any executory contract to which the financial institution is party without further liability to the financial institution or the receiver or may reject any obligation of the financial institution as a lessee of real or personal property. The department's election to reject a lease creates no claim for rent other than rent accrued to the date of termination or for actual damages, if any, for such termination, not to exceed the equivalent of six months' payment.

(Code 1981, 7-1-175, enacted by Ga. L. 1984, p. 949, 3.)

7-1-176. Sale of assets of financial institution in receivership.

(a) Whenever the department as receiver, with leave of court as provided in Code [Section 7-1-156](#), undertakes to sell all or part of the assets of a financial institution in its possession in consideration of the assumption by the purchaser of the liabilities due to depositors and other

creditors other than the holders of subordinated securities, the department shall be under no further obligation to file any inventory, appraisal, partial accounting, or deliver any notice to creditors other than holders of subordinated securities until the filing of the final accounting unless otherwise directed by the court.

(b) Notwithstanding any other law to the contrary, in facilitation of a purchase of assets and assumption of liabilities as described in subsection (a) of this Code section, all or any part of the assets may be sold to the deposit insurer for the financial institution in liquidation notwithstanding such insurer's capacity as receiver or deputy receiver of the financial institution. Such insurer as receiver or deputy receiver may also borrow from itself in its corporate capacity any amounts necessary to facilitate the assumption of deposit liabilities by an existing financial institution or a newly chartered financial institution, assigning any part or all of the assets of the closed bank as security for such loan.

(Code 1981, 7-1-176, enacted by Ga. L. 1984, p. 949, 4.)

PART 8

CLAIMS, PRIORITIES, AND ACCOUNTING IN RECEIVERSHIPS

7-1-190. Preservation of assets; proceedings in lieu of attachment, execution, or repossession.

(a) The status of all parties shall become fixed on the date the department takes possession of a financial institution. No corporation or person shall thereafter acquire any lien or charge against the financial institution for so long as it remains in receivership, provided that nothing in this Code section or elsewhere in this chapter shall be construed to impair any preferred claim arising pursuant to Code [Section 11-4-214](#).

(b) No execution, attachment, or repossession (whether by action or otherwise) shall issue or be proceeded with against any assets owned by or in the custody or possession of a financial institution in receivership. In lieu of the right to issue an attachment or execution against assets of or lawfully in the possession or custody of the financial institution, a plaintiff may proceed by giving written notice of his claim to the department or to the deputy receiver of such financial institution; and he shall thereafter prove his claim in the regular manner prescribed by this chapter. If, in filing its account, the department rejects the claimed right to execution or attachment, the court shall adjudicate the matter as in the case of other disputed claims.

(Ga. L. 1919, p. 135, art. 7, 3; Code 1933, 13-803; Code 1933, 41A-801, enacted by Ga. L. 1974, p. 705, 1.)

7-1-191. Exclusivity of claims procedure; effect of receivership on pending actions.

All claims against the financial institution, action upon which has not been commenced prior to the time the department took possession, shall be presented in the regular manner provided by this chapter for the presentation of claims. Neither a depositor or other creditor of the financial institution nor any other claimant may maintain any action at law or in equity upon such claim, except by regular method provided by this chapter for exceptions to the accounting of the department as receiver. However, an action for the return of specific property or property with respect to which the plaintiff holds a perfected security interest or security title which could have been recovered by the plaintiff from the financial institution in receivership may be maintained in the principal court against the department in its name as receiver of the financial institution. All actions pending against the financial institution when the department takes possession shall be automatically stayed during the receivership, provided that all such actions, except those specified in subsection (b) of Code [Section 7-1-190](#), may proceed with prior approval of the principal court.

(Code 1933, 41A-802, enacted by Ga. L. 1974, p. 705, 1.)

7-1-192. Notice to depositors and other creditors to present claims.

(a) After filing a supplement to the certificate of possession setting forth its determination to liquidate the affairs of a financial institution in receivership, the department shall forthwith give notice of such determination to all corporations or persons who appear upon the books of the financial institution as depositors or other creditors or who are otherwise known to the department to be or who claim to be depositors or other creditors or who have given notice to the department claiming a right of execution or attachment against any assets owned by or legally in the custody or possession of the financial institution.

(b) The notice to depositors shall state the amount which the books or other records of the financial institution show to be due to such depositor. It shall also state that unless such depositor shall, within a specified time, present to the department his bank statement or passbook or other evidence of his account showing a different amount to be due or unless such depositor shall, within a specified time from the date of such notice, otherwise prove in the manner provided by this chapter that a different amount is due, the amount shown to be due by the books of the financial institution will be conclusively presumed to be correct unless the court, pursuant to this chapter, grants him an extension of time.

(c) The notice to each creditor, other than a depositor, shall inform such creditor that he must present his claim in the manner provided by this chapter within a specified time from the date of such notice or else be permanently barred from sharing in any distribution of the assets of the financial institution unless the court, pursuant to this chapter, grants him an extension of time.

(d) The department shall also advertise, in the manner prescribed by this chapter, its determination to liquidate the financial institution. Such advertisement shall state that the

department has filed an inventory and appraisal of the assets of the institution and shall designate the superior court with which such documents have been filed and shall describe the legal consequences to depositors and other creditors of failure to prove those claims within the time set in the notice. For purposes of this advertisement and other notices or advertisements required hereunder, the department may, to the extent it deems appropriate, describe shareholders of building and loan associations and credit unions as such, not by use of the defined term "depositors" used in this chapter.

(e) The department shall specify as the last day upon which depositors and other creditors can prove their claims a date at least 30 days after the date of the sending of such notice to depositors and creditors. However, claims based upon deficiencies in, or surcharges with respect to, assets which such financial institution held in a fiduciary capacity may be proved at any time within six months after the appointment of a substituted fiduciary of the estate of which such assets were a part and the adjudication of the account of such estate by the competent court.

(Ga. L. 1919, p. 135, art. 7, 13; Code 1933, 13-815, 13-816; Code 1933, 41A-803, enacted by Ga. L. 1974, p. 705, 1.)

7-1-193. Proof of claims of depositors.

(a) Any depositor who disagrees with the amount shown by the books or other records of the financial institution to be due to him shall prove his claim by presenting his bank statement or passbook or other documentary indication of indebtedness to the department within the time and in the manner designated by the department pursuant to this chapter. Any such depositor who shall not have received or shall have lost his bank statement or passbook or other documentary evidence or who shall believe that the amount shown to be due him by such bank statement or passbook or other documentary evidence is incorrect shall, within the time designated by the department, present his claim to the department by whatever method, including affidavits, the department shall designate.

(b) Any depositor who shall not present his claim within the designated time and in the manner provided by this Code section shall be bound by the amount appearing to be due to him upon the books or records of the financial institution or, where the name of such depositor does not appear at all upon the books or records of the financial institution or appears on such books or records but with no balance appearing to be due to him by the financial institution, shall be permanently barred from sharing in any distribution of the assets of the financial institution. However, the principal court may, upon petition and adequate cause shown, permit any depositor to file his claim at a later date, but no claim shall in any event be allowed to be filed after the last day for the filing of exceptions to the first account of the department.

(c) This Code section shall not, however, be construed to deprive any depositor of any right of action at law or in equity which he may have against an officer or employee or former officer or employee of the financial institution or upon the bond of such officer or employee or former officer or employee for any act committed by such officer or employee which resulted in such depositor's name not appearing upon the books of the financial institution or appearing upon them but being credited with an amount below that actually due.

(d) The department shall prescribe the form for the proof of claim of all depositors and for an affidavit as to the truth of statements therein to be included with the claim. Whenever requested by any such depositor to prepare such proof of claim or to take the affidavit thereto, the department may do so without any charge to such depositor if the department concludes that it would be burdensome or difficult for the depositor to prepare the proof.

(Ga. L. 1919, p. 135, art. 7, 18; Ga. L. 1925, p. 119, 1; Code 1933, 13-820; Code 1933, 41A-804, enacted by Ga. L. 1974, p. 705, 1.)

7-1-194. Proof of claims of creditors.

Creditors other than depositors shall not share in any distribution of the assets of the financial institution unless the creditor or his designated representative shall, within the time and in the manner specified by the department pursuant to this chapter, present to the department a statement of his claim, together with a copy of any book entries pertaining thereto, any evidence of indebtedness or other instrument received as evidence thereof, the details with respect to any collateral or agreement of pledge received in connection therewith, and a description of any insurance pertaining thereto. The department shall prescribe the form for the proof of claim of creditors and for affidavit as to the truth of statements therein to be included with the claim. However, the court may, upon petition and adequate cause shown, permit any creditor to file his claim upon a later date, but no claim shall in any event be allowed to be filed after the last day for the filing of exceptions to the first account of the department.

(Ga. L. 1919, p. 135, art. 7, 18; Ga. L. 1925, p. 119, 1; Code 1933, 13-820; Code 1933, 41A-805, enacted by Ga. L. 1974, p. 705, 1.)

7-1-195. Allowance of claims.

For the purposes of the accounting provided for in this chapter, the department shall allow the claims of depositors for the amounts shown to be due to them upon the books or other records of the financial institution (unless it determines such books or records to be in error) or for such other amounts as they shall, within the time and in the manner provided by this chapter, prove to the satisfaction of the department are due to them. It shall likewise allow the claims of all other creditors, when presented within the time and in the manner provided by this chapter, if it shall be satisfied that the amounts claimed are rightfully due. In allowing claims, the department may change their rank to that which it determines to be proper and may reduce them by exercise of the financial institution's right of setoff against the claimant. It shall reject all other claims of depositors and other creditors.

(Ga. L. 1919, p. 135, art. 7, 15; Ga. L. 1927, p. 195, 4; Code 1933, 13-817; Code 1933, 41A-806, enacted by Ga. L. 1974, p. 705, 1.)

7-1-196. Advance payment of dividends to depositors.

(a) After filing a supplement to the certificate of possession setting forth its determination to liquidate the affairs of the financial institution, the department may, without leave of court and without filing an account, make an advance payment of a dividend to all depositors the amounts of whose claims, as they appear upon the books or other records of the financial institution, are undisputed. The dividend shall be calculated as if the claims of all other depositors, as they appear upon the books or other records of the financial institution, and the claims of all creditors or other corporations or persons who assert priority over or parity with depositors in the order of distribution of the assets, were valid and uncontested.

(b) However, the department shall not make such an advance payment of a dividend to any depositor until it shall have set aside an amount sufficient to pay in full the claims of all creditors or other corporations or persons asserting or entitled to priority over depositors in the order of distribution and to pay the proportionate dividend on the amounts claimed by the other depositors and by any creditors or other corporations or persons who are entitled to or who claim parity with depositors in the order of distribution provided for by law. The department shall likewise set aside, before making such advance payment, such amount as it shall deem necessary for the expenses of administration of the receivership.

(Ga. L. 1919, p. 135, art. 7, 21; Code 1933, 13-823; Code 1933, 41A-807, enacted by Ga. L. 1974, p. 705, 1.)

7-1-197. Expenses of administration.

Any reasonable expenditure made by the department as receiver of a financial institution, including any expense incurred in the management, reorganization, consolidation, liquidation, or distribution of the assets and affairs of the financial institution, any payment of a loan or interest thereon under Code [Section 7-1-164](#), and any compensation paid to the deputy receiver, attorneys, or any other person employed to assist the department in such management, reorganization, consolidation, liquidation, or distribution shall be paid out of the assets of the financial institution, provided it is included in any partial or final account filed by the department pursuant to this chapter and is approved by the principal court in which such account is filed. Where such expenses are incurred or such compensation is paid for the benefit of the estate of more than one financial institution in the possession of the department as receiver, an equitable portion of such expenses or compensation shall be paid out of the assets of each financial institution on whose behalf such expenditures were incurred or paid.

(Ga. L. 1919, p. 135, art. 7, 23; Ga. L. 1925, p. 119, 1; Ga. L. 1931, p. 7, 91; Code 1933, 13-825; Code 1933, 41A-808, enacted by Ga. L. 1974, p. 705, 1.)

7-1-198. Filing or ordering partial or final account; notice of filing; exceptions.

(a) At any time after the expiration of the period fixed by the department for the presentation of claims, it may file a partial account of its administration of the business and property of the financial institution, duly verified under oath or affirmation, with the principal court. If the department does not file its first account within one year after it takes possession of a financial institution, any depositor, other creditor, or shareholder of such financial institution may petition the court to order the department to file an account. The court may, in its discretion, grant or refuse the petition. Whenever it becomes economically advisable to wind up finally the affairs of a financial institution in liquidation, the department shall file with the principal court its final account, duly verified under oath or affirmation. The clerk of the principal court shall not be under any duty to recopy or otherwise to record any account and shall make no charge except the regular fee for filing such or similar papers.

(b) The account shall present the department's administration of the estate, including a statement of all receipts or expenditures, a list of all claims which have been allowed, and a separate list of claims which have been objected to or are disputed, showing as to all depositors and other creditors, their names and addresses, the amounts due or claimed to be due to them, and any priorities in the order of distribution granted to or claimed by them. A final account need not present matters previously settled incident to partial accounts.

(c) The department shall forthwith give written or printed notice of the filing of an account to all corporations or persons whom it knows to be, or who claim to be depositors or other creditors or who have given to it notice claiming a right of attachment or execution. Such notice shall also state that unless an exception to the account or to any item therein is filed with the principal court within 30 days from the date of the filing thereof, it will be confirmed absolutely. The department shall also advertise such notice in a newspaper or newspapers as provided in this chapter, stating the date upon which it has filed its partial or final account and that all exceptions to the account must be filed within 30 days from the date of the filing of the account. The department shall forthwith file with the court, under oath or affirmation, a statement that it has, in the manner provided by this chapter, sent both the notice of its determination to liquidate and the notice of its filing of an account to all corporations or persons entitled thereto. The department shall also file the proofs of publication of the advertisements required by this Code section.

(d) Any corporation or person who is or who claims to be a depositor, other creditor, or shareholder of a financial institution or who has given to the department notice of his claim to the right of execution or attachment or who asserts any other type of claim against a financial institution may, within 30 days after the filing of an account by the department, file in the principal court specific exceptions in writing, under oath or affirmation, to such account or to any item therein. Notice of any exception to an individual item in an account shall forthwith be personally served upon or sent by registered or certified mail or statutory overnight delivery to the corporation or person whose claim is thus objected to or his counsel and also the department or the deputy receiver managing the affairs of the particular financial institution or the counsel of either. Affidavit of the serving or sending of such notice shall forthwith be filed with the court.

(e) Whenever an exception is filed to any expenditure made by the department as an expense of administration, the department shall keep an accurate record of the salaries and other expenses properly incurred by it in the contesting of such exception. If the exception is overruled and the expenditure is sustained, the court may, in its discretion, assess such expenses and salaries, together with the regular costs provided by law, upon the depositor, other creditor, or shareholder filing such exception.

(Ga. L. 1919, p. 135, art. 7, 15-17; Ga. L. 1927, p. 195, 4, 4A; Code 1933, 13-817, 13-818, 13-819; Code 1933, 41A-809, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 2000, p. 1589, 3.)

7-1-199. Adjudication of rejected claims and exceptions to account.

(a) If any claim has been rejected by the department or any exception has been filed to the account or to any item thereof, the principal court shall, as soon as expedient after the expiration of the period for the filing of exceptions to the account, fix a date for hearing in court arguments on all rejected claims and all exceptions to the account or to any item thereof. The department shall give notice of such hearing to all corporations or persons whose claims have been rejected by the department or objected to in the manner provided by this chapter. It shall likewise give notice to all corporations or persons who have filed exceptions to the account or to any item thereof. Such notice shall set forth, insofar as possible, the reasons for the rejection of the claim or the nature of the exception to the item of the account and shall state that all parties whose claims are rejected or objected to must appear in the principal court upon the date fixed by the court to prove their claims or they will be bound by the ex parte decision of the court.

(b) The principal court in which the account is filed shall itself hear arguments upon any rejected claim or upon any exception to an account, or to any item thereof, upon the date fixed by it for this purpose. The court shall itself decide, without delay, all matters in controversy. If any party does not appear in court on the day fixed, the court shall conduct the hearing ex parte and shall render its decision upon the merits as they appear after such hearing.

(Code 1933, 41A-810, enacted by Ga. L. 1974, p. 705, 1.)

7-1-200. Confirmation of account; distribution of dividends; final disposition of assets insufficient for distribution; cancellation of articles.

(a) If the department has approved all depositors' claims, as proved by them pursuant to this chapter or if not proved as they appear upon the books or other records of the financial institution and if no exception has been filed to an account or to any item thereof within 30 days after the filing of such account by the department, the principal court shall confirm the account absolutely. If any funds are available for distribution, the department shall then declare and pay out of such funds a partial or a final dividend, according to the priorities established by law. If the department has rejected any deposit or claim or if any exception has been filed, the court shall confirm the account as to all other matters and claims. The department may then declare and pay out of the funds available for distribution, if any, a dividend, according to the priorities

established by law. The dividend shall be calculated as if all deposits and other claims were valid and approved. The department, before paying any such dividend, shall set apart funds or assets sufficient to pay required distribution on any claim still being asserted which has been rejected or reduced in priority by the department or to which an exception has been filed if the amount and the priority claimed were sustained by the court. If any such claim shall be determined by the court to be valid, the department shall pay to the corporation or person entitled thereto the dividend which has been set apart in the manner provided by this Code section. If any such claim shall be determined by the court to be invalid, the dividend which has been set apart in the manner provided by this Code section shall be distributed in the order of the priorities established by law to those whose claims have been approved by the court; provided, however, that any final determination as to disputed claims may be appealed as provided by law and payments may be withheld pending the results of the appeal.

(b) The confirmation of any account after the adjudication of all claims therein which have been rejected or reduced in priority by the department or to which exceptions have been filed and of all other exceptions to such account shall be conclusive as to all matters therein. Except as otherwise provided in this chapter, no claim of any depositor or other creditor shall be valid if not listed and approved in the first account which has been filed. The confirmation of the final account and distribution thereunder shall discharge the department, the commissioner, the deputy receiver, any other employee, and the legal counsel, as well as the surety for any of them, from all further civil liability for any act done in an official capacity with respect to the receivership.

(c) Upon confirmation of the final account the department may impound the balance of the assets, including real property, remaining in its hands and shall not be obligated to sell such assets or actively to collect on the impounded assets. With regard to said assets, including real estate and including after-discovered assets, it shall, however, retain all of its powers to receive payment for them or, with leave of court, to adjust or compromise them. After its final accounting and discharge, the department shall have power to make further distribution to the creditors, depositors, and shareholders when, in its opinion, sufficient funds are realized to justify such distribution after deducting reasonable costs for collection, preservation, and distribution. If the department is of the opinion that the funds collected or probably to be collected will be insufficient to make a distribution practicable and that all interested claimants will not in the future have their claims satisfied, it shall, after deducting reasonable costs for collection and preservation, hold the remainder of such property subject to Article 5 of [Chapter 12 of Title 44](#). Thereafter, the articles of incorporation or charter shall no longer be valid and the department shall notify the Secretary of State that the receivership has been concluded. The Secretary of State shall promptly cancel such articles or charter of record in that office.

(Ga. L. 1919, p. 135, art. 7, 21; Code 1933, 13-823; Code 1933, 41A-811, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1980, p. 972, 4.)

7-1-201. Unclaimed dividends.

Whenever a dividend remains unclaimed six months after it has been declared and the department is unable to locate the depositor or other claimant to whom said dividend was

payable, the dividend shall become a part of the general assets of the financial institution and be distributed as other assets.

(Ga. L. 1919, p. 135, art. 7, 24; Ga. L. 1925, p. 119, 1; Code 1933, 13-826; Code 1933, 41A-812, enacted by Ga. L. 1974, p. 705, 1.)

7-1-202. Order of payment of liabilities; secured or preferred claims and liens.

(a) In the distribution of the assets of a financial institution which is liquidated or dissolved, whether under this chapter or by any other method, the order of payment of liabilities of the financial institution in the event that its assets are insufficient to pay in full all its liabilities for which claims are duly made shall be:

(1) First, the payment of costs and expenses of administration of the liquidation or dissolution;

(2) Second, the payment of debts due depositors;

(3) Third, the payment of all state taxes;

(4) Fourth, judgments;

(5) Fifth, contractual obligations;

(6) Sixth, unliquidated claims for damages and the like;

(7) Seventh, capital securities.

(b) Nothing in this chapter shall impair the validity or the priority otherwise accorded by law to any security interest, security title, preferred claim arising under Code [Section 11-4-214](#), or any lien arising by force of law; provided, however, any of the foregoing may be delayed in payment by the principal court until costs of administration including loans or interest payments under Code [Section 7-1-164](#) or the costs of selling or otherwise disposing of assets under this chapter have been met in any case where the principal court determines that the claimant of the security interest, security title, preferred claim, or lien has expressly or impliedly consented to the administrative activities involved or has benefited from such activities.

(Ga. L. 1919, p. 135, art. 7, 19; Ga. L. 1925, p. 119, 1; Ga. L. 1927, p. 195, 5; Ga. L. 1931, p. 7, 91; Code 1933, 13-821; Code 1933, 41A-813, enacted by Ga. L. 1974, p. 705, 1.)

7-1-203. Subrogation of insurer of deposits or shares.

Where the deposits or shares of a financial institution are insured by a federal public body or otherwise, the claims of depositors shall be subrogated in favor of said insurer to the extent that it pays or makes available for payment claims of such depositors against the financial institution, provided that the rights of such depositors to receive dividends or other distributions upon that portion of their claims not made available for payment shall not be affected by such subrogation.

(Code 1933, 41A-814, enacted by Ga. L. 1974, p. 705, 1.)

7-1-204. Liquidation of excess assets by trustees.

If any unliquidated assets remain in the department's possession after the filing and confirmation of its final account, the payment in full of the claims of all depositors, creditors, and other claimants which have been approved by the court and the distribution to shareholders of any cash balance remaining thereafter, it shall call a meeting of all the shareholders of the financial institution by giving them written notice at least 30 days before the day fixed for the meeting. At such meeting, the shareholders shall elect by ballot a trustee or trustees, who shall complete the liquidation. A majority of the shares present in person or by proxy shall be necessary to elect such trustee or trustees. The department shall file a certified copy of the minutes of said meeting with the principal court. If no trustee is elected in this manner on the day designated, the department shall petition the principal court for the appointment of a trustee or trustees. The trustee or trustees who are thus elected by the shareholders or appointed by the court shall give bond to the state, in such amount, with such surety, and under such conditions as the court may direct. The department shall then transfer to such trustee or trustees all the assets of the financial institution which are still in its possession. After such transfer by the department to a trustee or trustees for the benefit of the shareholders, the financial institution shall have no corporate powers or privileges whatsoever, except that its shareholders may elect a successor trustee or trustees upon death, removal, or inability of the first trustee or trustees to act. The trustee or trustees shall not succeed to any powers or privileges except such as shall be necessary to the liquidation of the remaining assets which have been transferred to such trustee or trustees by the department.

(Ga. L. 1919, p. 135, art. 7, 24-27; Code 1933, 13-827, 13-828, 13-829; Code 1933, 41A-815, enacted by Ga. L. 1974, p. 705, 1.)

7-1-205. Destruction of records.

The department is authorized to destroy all records of the financial institution of which it was in possession as receiver and all records of such receivership at the expiration of six years from the date of the absolute confirmation of its final account, except where any provision of this

chapter expressly provides a different method for the disposition of the records or a longer period for their preservation.

(Code 1933, 41A-816, enacted by Ga. L. 1974, p. 705, 1.)

PART 9

RECEIVERSHIP PROCEDURES INVOLVING TRUST OR POOLED ASSETS

7-1-220. Definitions and applicability.

(a) As used in this part, the term:

(1) "Pooled assets" means mortgages, securities, or other assets comprising any mortgage or securities pool operated by such financial institution (whether said assets are held in the name of the institution or a nominee therefor) or with respect to which undivided interests have been created, regardless of whether or not the financial institution is technically a trustee and regardless of whether or not certificates of participation have been issued with respect thereto.

(2) "Trust assets" means all assets held by financial institutions as trustee, administrator, executor, guardian, or in a similar fiduciary capacity but shall not include assets held by the commercial department of the financial institution or "pooled assets" as defined in paragraph (1) of this subsection.

(b) In the event of conflict, this part and not other parts of this article or other articles of this chapter shall control as to the trust assets and the pooled assets of any financial institution in receivership.

(Code 1933, 41A-901, enacted by Ga. L. 1974, p. 705, 1.)

7-1-221. Status of department in relation to trust and pooled assets.

(a) Upon taking possession of a financial institution, the department shall hold trust and pooled assets separate from the assets of the financial institution itself. Trust and pooled assets shall not be available for distribution to depositors, other creditors, or shareholders.

(b) The department as receiver shall have all rights, powers, and duties of the financial institution in regard to trust and pooled assets, including title to the assets and the right to administer them.

(Code 1933, 41A-902, enacted by Ga. L. 1974, p. 705, 1.)

7-1-222. Jurisdiction of court over trust and pooled assets.

The principal court shall have exclusive jurisdiction over all matters concerning trust and pooled assets during the period that such assets are held by the department as receiver.

(Code 1933, 41A-903, enacted by Ga. L. 1974, p. 705, 1.)

7-1-223. Substituted trustee or manager for trust and pooled assets.

(a) Upon determining to liquidate a financial institution or if it otherwise deems it advisable, the department shall:

(1) With leave of court, transfer all of the trust assets or all of the pooled assets or all of both types of assets to another financial institution which shall assume the responsibilities of the institution in receivership in regard to such assets and act as substituted trustee or manager; or

(2) Give written notice, insofar as the giving of such notice is practicable, to all parties interested in trust or pooled assets that they must within 30 days after the giving of notice apply for the appointment of a substituted trustee or manager to take over the trust or pooled assets. In the event that no such application is made with respect to particular trust assets or pooled assets, the department shall itself apply for appointment of a substituted trustee or manager. Upon application by an interested party or parties or by the department, the court shall appoint as successor trustee or manager that person or corporation best able, in its judgment, to protect the interests of those interested in particular trust or pooled assets. The successor trustees or managers shall have all rights, powers, and duties of the financial institution in regard to the trust or pooled assets committed to them except as these relationships may be modified by the court in accordance with law.

(b) Nothing in this Code section or Code [Section 7-1-222](#) shall be construed to impair any right of the grantor or beneficiaries of trust or pooled assets under applicable instruments or otherwise to secure or provide for the appointment of a substituted trustee or manager.

(Code 1933, 41A-904, enacted by Ga. L. 1974, p. 705, 1.)

7-1-224. Transfers to substituted trustee or manager without accounting.

In the event that the department and a substituted trustee or manager agree as to the identity and amount of the trust or pooled assets to be paid to the substituted trustee or manager and the substituted trustee or manager waives in writing the right to an accounting, then the department may transfer the trust or pooled assets to the substituted trustee or manager and will thereupon (together with the financial institution) be discharged from all liability or responsibility in connection with the trust or pooled assets.

(Code 1933, 41A-905, enacted by Ga. L. 1974, p. 705, 1.)

7-1-225. Transfers to substituted trustee or manager with accounting; deficiencies.

Except as authorized by Code [Section 7-1-224](#), the department shall, upon appointment of a substituted trustee or manager, file a full account with the appropriate court setting forth its administration of the trust or pooled assets and shall, upon the order of the court, transfer the trust or pooled assets to the substituted trustee or manager. Whenever the court shall determine that there is a deficiency in regard to the trust or pooled assets or that the financial institution is liable for a surcharge in connection therewith, the amount thereof shall constitute a claim against the financial institution. Such claim shall be filed in the manner of other claims with the principal court within 30 days of a final adjudication with respect to the amount thereof.

(Code 1933, 41A-906, enacted by Ga. L. 1974, p. 705, 1.)

PART 10
CHANGE IN CONTROL OF FINANCIAL INSTITUTIONS

7-1-230. Definitions.

As used in this part, the term:

(1) "Control" means the power directly or indirectly to direct the management or policies of a financial institution or to vote 25 percent or more of any class of voting securities of a financial institution.

(2) "Person" means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed in this paragraph.

(Code 1933, 41A-1005, enacted by Ga. L. 1980, p. 1076, 1.)

7-1-231. Acquisition of control without permission prohibited.

It shall be unlawful for a person, acting directly or indirectly or through concert with one or more persons, to acquire control of any financial institution through a purchase, assignment, pledge, or other disposition of voting stock of such institution, except with the approval of the department or as otherwise permitted by this part.

(Code 1933, 41A-1001, enacted by Ga. L. 1980, p. 1076, 1.)

7-1-232. Notice of proposed acquisition required; approval or disapproval by department; judicial review.

(a) For purposes of this Code section, the term "financial institution" shall include any "bank holding company" as that term is defined in subsection (a) of Code [Section 7-1-605](#).

(b) The department shall be given at least 60 days' prior written notice of any such proposed acquisition. If the department does not issue a notice disapproving the proposed acquisition within that time or extend the period during which a disapproval may issue for another 30 days, the proposed acquisition shall stand approved. The period for disapproval may be further extended only if the department determines that any acquiring party has not furnished all the information required under Code [Section 7-1-233](#) or that in its judgment any material information submitted is substantially inaccurate. An acquisition may be made prior to expiration of the disapproval period if the department issues written notice of its intent not to disapprove the action.

(c) Within three days after its decision to disapprove any proposed acquisition, the department shall notify the acquiring party in writing of the disapproval. Such notice shall provide a statement of the basis for the disapproval.

(d) Within ten days of receipt of such notice of disapproval, the acquiring party may request a hearing on the proposed acquisition. At the conclusion thereof, the department shall by order approve or disapprove the proposed acquisition on the basis of the record made at such hearing.

(e) Any person whose proposed acquisition is disapproved after a department hearing under this Code section may obtain review in accordance with Code [Section 7-1-90](#).

(Code 1933, 41A-1002, enacted by Ga. L. 1980, p. 1076, 1.)

7-1-233. Contents of notice.

Except as otherwise provided by regulation of the department, a notice filed pursuant to Code [Section 7-1-232](#) shall contain the following information:

(1) The identity, personal history, business background, and experience of each person by whom or on whose behalf the acquisition is to be made, including his material business activities and affiliations during the past five years and a description of any material pending legal or administrative proceedings in which he is a party and any criminal indictment or conviction of such person by a state or federal court;

(2) A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the five fiscal years

immediately preceding the date of the notice, together with related statements of income and source and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles consistently applied, and an interim statement of the assets and liabilities for each such person, together with related statements of income and source and application of funds, as of a date not more than 90 days prior to the date of the filing of the notice;

(3) The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made;

(4) The identity, source, and amount of the funds or other considerations used or to be used in making the acquisition and, if any part of these funds or other considerations has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with such persons;

(5) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the bank, to sell its assets or merge it with any company, or to make any other major change in its business or corporate structure or management;

(6) The identification of any person employed, retained, or to be compensated by the acquiring party or by any person on his behalf to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition and a brief description of the terms of such employment, retainer, or arrangement for compensation;

(7) Copies of all invitations or tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition; and

(8) Any additional relevant information in such forms as the department may require by regulation or by specific request in connection with any particular notice.

(Code 1933, 41A-1003, enacted by Ga. L. 1980, p. 1076, 1.)

7-1-234. Grounds for disapproving proposal.

The department may disapprove any proposed acquisition if:

(1) The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or attempt to monopolize the business of banking in any part of this state;

(2) The effect of the proposed acquisition of control in any section of this state may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade and the anticompetitive effects of the

proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(3) The financial condition of any acquiring person is such as might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;

(4) The competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank or in the interest of the public to permit such person to control the bank; or

(5) Any acquiring person neglects, fails, or refuses to furnish the department all the information required by it.

(Code 1933, 41A-1004, enacted by Ga. L. 1980, p. 1076, 1.)

7-1-235. Part inapplicable to bank holding company transactions.

This part shall not apply to a transaction subject to Code [Sections 7-1-605](#) through [7-1-608](#), relating to bank holding companies.

(Code 1933, 41A-1006, enacted by Ga. L. 1980, p. 1076, 1; Ga. L. 1984, p. 22, 7.)

7-1-236. Report of change in control.

Whenever a change occurs in the ownership of or right to vote the outstanding shares of any bank or trust company which will result in the control or a change in the control of the bank or trust company, the president or other officer of such bank or trust company shall, within ten days after knowledge thereof, report such facts to the department. As used in this Code section, the term "control" means the power to direct or cause, directly or indirectly, the direction of the management or policies of the institution. If there is any doubt as to whether a change in the ownership or voting rights of such shares is sufficient to result in control thereof or to effect a change in the control thereof, such doubt shall be resolved in favor of reporting the facts to the department.

(Code 1933, 13-2006, enacted by Ga. L. 1965, p. 524, 1; Code 1933, 41A-2013, enacted by Ga. L. 1974, p. 705, 1; Code 1981, 7-1-442; Code 1981, 7-1-236, as redesignated by Ga. L. 1986, p. 458, 3.)

PART 11

COSTS ON JUDICIAL PROCESS

7-1-237. Reimbursement of costs incurred in answering subpoena, garnishment, or order; subpoena to be answered within five days.

Any financial institution shall be reimbursed by the requesting party for costs which are reasonably necessary and which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data of a customer required or requested to be produced pursuant to a lawful subpoena, summons, warrant, garnishment, attachment, request for the production of documents, or court order where the financial institution is not a party to the action. Except as may otherwise be ordered by a judge of the court issuing the same, a financial institution shall have five business days from service of a subpoena within which to produce any books, papers, or records ordered produced pursuant to such subpoena. In the case of a garnishment or attachment of funds held by the financial institution, such reimbursement may be deducted prior to remission of such funds in response to the garnishment or attachment. Rates and conditions under which reimbursement may be made under this Code section shall be prescribed by regulations of the department.

(Code 1981, 7-1-237, enacted by Ga. L. 1983, p. 602, 3; Ga. L. 1985, p. 1467, 1; Ga. L. 1987, p. 805, 1.)

PART 12

DEPOSITS OF DECEASED DEPOSITORS

7-1-239. Payment of large deposits of deceased intestate depositors; deposit of sums held for deceased intestate residents; affidavit included with application for deposit.

(a) Except as provided in subsection (b) of this Code section and in Article 8 of this chapter, whenever any person dies intestate having a deposit of not more than \$10,000.00 in a financial institution, such financial institution shall be authorized to pay the proceeds of such deposit directly to the following persons:

- (1) To the surviving spouse;
- (2) If no surviving spouse, to the children pro rata;
- (3) If no children or surviving spouse, to the father and mother pro rata; or
- (4) If none of the above, then to the brothers and sisters of the decedent pro rata.

(b) Except as provided in Article 8 of this chapter, if no application for the deposit is made by any person named in subsection (a) of this Code section within 90 days from the death of the intestate depositor, the financial institution shall be authorized to apply not more than \$10,000.00 of the deposit of such deceased depositor in payment of the funeral expenses and expenses of the last illness of such deceased depositor upon the receipt of itemized statements of such expenses and the affidavit of the providers of such services that the itemized statements are true and correct and have not been paid. The financial institution shall pay such expenses in the order received after the death of the depositor.

(c) Payments pursuant to subsections (a) and (b) of this Code section shall operate as a complete acquittal and discharge to the financial institution of liability from any suit, claim, or demand of whatever nature by any heir, distributee, creditor of the decedent, or any other person. Such payment is authorized to be made as provided in this Code section without the necessity of administration of the estate of the decedent or without the necessity of obtaining an order that no administration is necessary.

(d) In any case in which a deceased depositor has more than \$10,000.00 on deposit in a financial institution, such financial institution shall be authorized to pay any amount up to \$10,000.00 to any of the persons authorized by this Code section to receive said deposit. The payment shall only act as a full and final acquittance of liability up to the amount paid by the financial institution and shall not act as a full and final acquittance to the financial institution of all liability.

(e) Notwithstanding any other provisions of law to the contrary, when any person dies intestate as a resident of this state and any person is left in possession of moneys belonging to the decedent, which moneys do not exceed \$10,000.00, such person shall deposit such moneys into a savings account in the name of the decedent in a financial institution located in the area of the decedent's residence. Such account shall be managed in accordance with the signature contract in effect at the financial institution at the time the account is opened. Any financial institution receiving such deposits is authorized to pay the proceeds in accordance with subsections (a), (b), (c), and (d) of this Code section.

(f) As used in this Code section, the term "financial institution" includes any federally chartered financial institution.

(g) Application by any claimant or claimants entitled in this Code section to receive deposits at a financial institution shall include an affidavit by the claimant or claimants which states that they qualify as the proper relation to the decedent as specified in this Code section and that the claimant or claimants know of no other corresponding claimant or claimants to such deposit. The financial institution may rely on a properly executed affidavit in disbursing the funds according to this Code section.

(Code 1981, 7-1-239, enacted by Ga. L. 1983, p. 661, 1; Ga. L. 1985, p. 1241, 1; Ga. L. 1986, p. 887, 1; Ga. L. 1996, p. 848, 3.)

7-1-239.1. Payment of checks or instruments payable to deceased intestate persons; affidavit included with application for payment.

(a) Whenever any person dies intestate having possession of or a right to possession of a check or other instrument payable to such deceased person and the amount of the check or instrument does not exceed \$10,000.00, the financial institution on which the check or instrument is drawn shall be authorized to accept and redeem the check or instrument by payment to the following persons:

- (1) To the surviving spouse;
- (2) If no surviving spouse, to the children pro rata;
- (3) If no children or surviving spouse, to the father and mother pro rata; or
- (4) If none of the above, then to the brothers and sisters of the decedent pro rata.

(b) If a check or other instrument is payable to more than one person, it may be accepted and redeemed as provided in subsection (a) of this Code section only if it has been endorsed by each payee other than the decedent.

(c) Payments made pursuant to this Code section shall operate as a complete acquittal and discharge to the financial institution of liability from any suit, claim, or demand of whatever nature by any heir, distributee, creditor of the decedent, or any other person. Such payment is authorized to be made as provided in this Code section without the necessity of administration of the estate of the decedent and without the necessity of obtaining an order that no administration is necessary.

(d) As used in this Code section, the term "financial institution" includes any federally chartered financial institution.

(e) Application by any claimant or claimants entitled in this Code section to receive payments of checks or other instruments at a financial institution upon which such instrument is drawn shall include an affidavit by the claimant or claimants which states that they qualify as the proper relation to the decedent as specified in this Code section and that the claimant or claimants know of no other corresponding claimant or claimants to such funds. The financial institution may rely on a properly executed affidavit in disbursing the funds according to this Code section.

(Code 1981, 7-1-239.1, enacted by Ga. L. 1985, p. 1241, 2; Ga. L. 1996, p. 848, 4.)

PART 13

BANK FEES

7-1-239.5. Fee for instruments drawn on other institutions.

No financial institution, savings bank, national bank, or state or federal credit union or savings and loan association may charge any fee of any kind to a person or corporation who does not have an account with that institution for cashing a check or other instrument which is payable to such person or corporation and is drawn on the account of another person or corporation with that institution.

(Code 1981, 7-1-239.5, enacted by Ga. L. 1997, p. 572, 1.)

ARTICLE 2 BANKS AND TRUST COMPANIES

PART 1 GENERAL MATTERS

7-1-240. Powers and restrictions applicable when acting as bank and trust company.

Any financial institution authorized by law to act as both a bank and a trust company shall enjoy and be subject to the powers and restrictions of a bank of its type in regard to its banking activities and in like manner shall enjoy and be subject to the powers and restrictions of a trust company in regard to its trust activity. With respect to general corporate matters not identified with either banking or trust functions, it shall have the privileges and restrictions of a bank of its type.

(Code 1933, 41A-1101, enacted by Ga. L. 1974, p. 705, 1.)

7-1-241. Restrictions on engaging in banking business.

(a) No person or corporation may lawfully engage in this state in the business of banking or receiving money for deposit or transmission or lawfully establish in this state a place of business for such purpose, except a bank, a national bank, a credit union to the extent provided in Article 3 of this chapter, a licensee engaged in selling checks to the extent permitted by Article 4 of this chapter, an international banking agency to the extent provided in Article 5 of this chapter, a building and loan association to the extent provided in Article 7 of this chapter, or a savings and loan association to the extent provided by the laws of the United States.

(b) None of the following shall be deemed to be engaged in the business of receiving money for deposit or transmission within the meaning of subsection (a) of this Code section:

(1) A club or hotel to the extent it receives money from members or guests for temporary safekeeping;

(2) An express, steamship, or telegraph company to the extent it receives money for transmission;

(3) An attorney at law, real estate agent, fiscal agent, insurance company, utility company, or any other person or corporation to the extent he or she or it receives and transmits money solely as an incident to a business or profession not governed by this chapter;

(4) Persons or corporations engaged in the business of cashing checks, dispensing cash through credit or debit card activated electronic devices, or recording of financial transactions resulting from and initiated at the point of the sale of goods or services; provided, however, no such person or corporation shall receive deposits except as provided in Code [Section 7-1-603](#) or otherwise engage in the business of banking; or

(5) A securities broker or dealer registered pursuant to the provisions of 15 U.S.C. Section 78o or Code [Section 10-5-3](#) to the extent that such securities broker or dealer:

(A) Sells certificates of deposit or interest in certificates of deposit or other deposit instruments issued by a bank or savings association, provided such securities broker or dealer fully and fairly discloses at the time of solicitation and confirmation whether or not federal deposit insurance is available for that deposit instrument;

(B) Purchases certificates of deposit or other deposit instruments issued by a bank or savings association for the account of the customer of such securities broker or dealer, provided such instruments are registered in the name of the customer or the custodian of such customer on the books or other records of the issuing bank or savings association; or

(C) Holds customer funds incidental to the purchase and sale of securities on behalf of such customer.

(c) The department is authorized to promulgate regulations and establish policy, consistent with the objectives of this chapter, which objectives include for the purposes of this Code section providing for appropriate competition between financial institutions and other financial organizations and protection of the interests of depositors, and to further define, restrict, or require registration of entities which provide financial products and services to the citizens of this state via the Internet, other on-line access to financial products and services, or alternate methods of delivery which differ from geographically based banking.

(Ga. L. 1919, p. 135, art. 1, 4; Code 1933, 13-204; Ga. L. 1960, p. 1170, 1; Ga. L. 1966, p. 691, 1; Code 1933, 41A-1102, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1985, p. 258, 3; Ga. L. 1986, p. 458, 4; Ga. L. 1990, p. 301, 1; Ga. L. 1997, p. 485, 10; Ga. L. 2004, p. 631, 7.)

7-1-242. Restriction on corporate fiduciaries.

(a) No corporation, partnership, or other business association may lawfully act as a fiduciary in this state except:

(1) A financial institution authorized to act in such capacity pursuant to the provisions of Georgia law;

(2) A trust company;

(3) A national bank or a state bank lawfully doing a banking business in this state and authorized to act as a fiduciary under the laws of the United States or another state;

(4) A savings bank or savings and loan association lawfully doing a banking business in this state and authorized to act as a fiduciary under the laws of the United States or another state;

(5) Attorneys at law licensed to practice in this state, whether incorporated as a professional corporation or otherwise;

(6) An investment adviser registered pursuant to the provisions of 15 U.S.C. Section 80b-3 or Code [Section 10-5-3](#), provided this exception shall not authorize an investment adviser to act in any fiduciary capacity subject to the provisions of [Title 53](#), relating to wills, trusts, and the administration of estates; or

(7) A securities broker or dealer registered pursuant to the provisions of 15 U.S.C. Section 78o or Code [Section 10-5-3](#) acting in such fiduciary capacity incidental to and as a consequence of its broker or dealer activities.

(b) Acting as a fiduciary for purposes of this Code section includes but is not limited to:

(1) Accepting or executing trusts or otherwise acting as a trustee;

(2) Administering real or tangible personal property located in Georgia or elsewhere. For the purposes of this paragraph, "administer" means to possess, purchase, sell, lease, insure, safekeep, manage, or otherwise oversee; and

(3) Acting pursuant to a court order as personal representative, executor, or administrator of the estate of a deceased person or as guardian or conservator for a minor or incapacitated person.

(c) Nothing in this chapter shall be construed to repeal or to change Part 2 of Article 16 of [Chapter 12](#) of [Title 53](#), dealing with foreign trustees, or Part 3 of Article 16 of [Chapter 12](#) of [Title 53](#), dealing with certain foreign corporations acting as fiduciaries, or any other statutes or rules of law on such subjects.

(Code 1933, 109-302.1, enacted by Ga. L. 1973, p. 525, 1; Code 1933, 41A-1103, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1980, p. 972, 5, 6; Ga. L. 1981, p. 1366, 4; Ga. L. 1990, p. 301, 2; Ga. L. 1991, p. 810, 2; Ga. L. 1998, p. 795, 13; Ga. L. 2004, p. 631, 7.)

7-1-243. Restrictions on banking and trust nomenclature.

(a) Except as provided in subsection (c) of this Code section, no person or corporation except a bank, a national bank, or a corporation lawfully owning the majority of the voting stock of a bank or national bank or a subsidiary of such bank, national bank, or corporation shall use the words "bank," "banker," "banking company," "banking house," or any other similar name

indicating that the business done is that of a bank upon any sign at its place of business or elsewhere, or upon any of its letterheads, billheads, blank checks, blank notes, receipts, certificates, circulars, advertisements, or any other written or printed matter.

(a.1) Except as provided in subsection (c) of this Code section, no person or corporation except a credit union or a federal credit union shall use the words 'credit union', or any other similar name indicating that the business done is that of a credit union upon any sign at its place of business or elsewhere, or upon any of its letterheads, billheads, blank checks, blank notes, receipts, certificates, circulars, advertisements, or any other written or printed matter.

(b) Except as provided in subsection (c) of this Code section, no person or corporation except:

(1) A corporation lawfully authorized to exercise trust powers or any subsidiary thereof;

(2) A corporation lawfully owning the majority of the voting stock of any corporation authorized to exercise trust powers, or any subsidiary of such owner corporation;

(3) An enterprise whose structure is in the nature of a trust where the trustees include a corporation lawfully authorized to exercise trust powers in this state; or

(4) An eleemosynary institution

shall use the words "trust" or "trust company" or any similar name indicating that the business done is that of a trust company upon any sign at its place of business or elsewhere, or upon any of its letterheads, billheads, blank checks, blank notes, receipts, certificates, circulars, advertisements, or any other written or printed matter.

(c) Nothing in this Code section shall be construed to:

(1) Prevent the use of the words "banks," "banker," "banking," "banker's," "trust," or any similar word in a context clearly not purporting to refer to a banking or a trust business or to a business primarily engaged in the lending of money, underwriting or sale of securities, acting as a financial planner, financial service provider, investment or trust adviser, or acting as a loan broker;

(1.1) Prevent the use of the words 'credit union', or any similar word in a context clearly not purporting to refer to a credit union or to a business primarily engaged in the lending of money, or accepting shares or deposits or acting as a loan broker;

(2) Prohibit advertisement in media distributed in or transmitted into this state by persons or corporations lawfully engaged in the banking, credit union, or trust business outside of this state; or

(3) Prevent any person or corporation from continuing to use its name legally in use on April 1, 1989.

(d) The department shall advise the Secretary of State of any corporate name or proposed corporate name it deems to be inconsistent with this Code section.

(Ga. L. 1927, p. 344, 1, 2; Code 1933, 109-502; Ga. L. 1974, p. 463, 1; Code 1933, 41A-1104, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1978, p. 1717, 3; Ga. L. 1981, p. 1366, 5; Ga. L. 1989, p. 1257, 2; Ga. L. 1999, p. 674, 3.)

7-1-244. Deposit insurance requirements; public notices when deposits not properly insured.

(a) Every bank shall obtain and maintain deposit insurance satisfactory to the department; provided, however, that banks which have had their deposit insurance withdrawn or canceled may, in the discretion of the department, continue to accept deposits; provided, further, such banks shall within six months after such withdrawal or cancellation of insurance obtain deposit insurance, satisfactory to the department, written by an insurance company authorized to transact business in this state or by the Federal Deposit Insurance Corporation. The department may, in its discretion, for cause shown, extend the time limitation in which deposit insurance must be obtained.

(b) Deposit insurance required to be obtained in subsection (a) of this Code section need not be in excess of amounts insured by the Federal Deposit Insurance Corporation at the time the insurance is obtained; but wherever the insurance coverage is, in the opinion of the department, less than amounts insured by the Federal Deposit Insurance Corporation, the bank shall be required to post at a conspicuous place near the entrance of such bank a sign in boldface print, in letters at least four inches high, which states "Deposits Not Insured" or "Deposits Insured Up To (insert amount of deposit insurance)." Such wording shall also follow the name of the bank wherever it is written or printed and shall be posted in writing which is easily legible in letters at least one inch high at each window or desk receiving deposits.

(Ga. L. 1966, p. 692, 17; Code 1933, 41A-1105, enacted by Ga. L. 1974, p. 705, 1.)

PART 2

GENERAL POWERS OF BANKS AND TRUST COMPANIES

7-1-260. General corporate powers.

Subject to restrictions contained in this chapter or in its articles, a bank or trust company shall have the power:

(1) To have perpetual duration unless a limited period of duration is stated in its articles. Each bank or trust company existing on April 1, 1975, shall have perpetual duration unless its articles are amended under this chapter to provide for a limited period of duration;

(2) To sue and be sued, complain and defend in its corporate name;

(3) To have a corporate seal, which may be altered at pleasure, and to use the same by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced;

(4) To adopt, alter, and repeal bylaws pursuant to the procedures of Code [Section 7-1-481](#) containing provisions for the regulation and management of affairs of the institution not inconsistent with law or its articles;

(5) To elect or appoint and remove officers and agents of the institution and to define their duties and fix their compensation;

(6) To make contracts;

(7) To make, irrespective of corporate benefit, loans, investments, contributions, and donations for community development and the promotion of the public welfare or for other religious, charitable, scientific, educational, hospital, civic, or similar purposes and in time of war or other national emergency in aid of the national effort with respect thereto;

(8) At the request or direction of the United States government or any public body thereof, to transact lawful business in time of war or national emergency in aid of the national effort in connection therewith;

(9) To procure, for its benefit, insurance on the life of any of its directors, officers, or employees or any other person whose death might cause financial loss to the bank or trust company; or, pursuant to any contract lawfully obligating the bank or trust company as guarantor or surety, on the life of the principal obligor; and

(10) To reimburse and indemnify litigation, liabilities, and expenses of directors, officers, and employees pursuant to agreements with them or otherwise and to purchase and maintain liability insurance for their benefit unless otherwise limited pursuant to this chapter.

(Ga. L. 1898, p. 78, 3; Civil Code 1910, 2817; Ga. L. 1917, p. 56, 1; Ga. L. 1919, p. 135, art. 17, 1; Ga. L. 1920, p. 76, 1; Code 1933, 13-1801, 109-201; Code 1933, 41A-1201, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1989, p. 946, 67; Ga. L. 1989, p. 1257, 3; Ga. L. 1995, p. 673, 11.)

7-1-261. Additional operational powers.

Banks and trust companies shall, in addition, have the power:

(1) To act as agent of the United States or any public body thereof for the sale or issue of bonds, notes, or other obligations of the United States, or those for which the full faith and credit of the United States is pledged, and to grant security interests in its assets for the faithful performance of its duties as agent;

(2) To receive for safekeeping or to rent out receptacles or safe-deposit boxes for the deposit of papers and other personal property;

(3) To grant security interests in their assets for borrowings authorized by this chapter and to dispose of their assets in the same manner as corporations generally;

(4) To give bond in any proceeding in any court in which they are a party or upon any appeal in any such proceeding and to secure such bond;

(5) To acquire and hold real property to the extent permitted by Code [Sections 7-1-262, 7-1-282, and 7-1-286](#);

(6) To acquire and hold stocks and investment securities subject, in the case of banks, to the restrictions of Code [Sections 7-1-287 and 7-1-288](#) and, in the case of trust institutions, to the restrictions of Code [Section 7-1-312](#);

(7) To acquire and hold personal property necessary in the exercise of powers conferred by this chapter;

(8) To acquire and hold any property in order to avoid loss on an evidence of indebtedness, agreement for the payment of money, or an investment security previously acquired lawfully and in good faith subject to the restrictions of Code [Section 7-1-263](#);

(9) To hold property lawfully held on April 1, 1975, irrespective of any restriction or limitation in this chapter, subject to the inclusion of any such property in any computation of limitation on the acquisition of property of like character under this chapter;

(10) To enter into an agency relationship as defined in Code [Section 7-1-4](#) subject to restrictions and qualifications prescribed by regulations of the department; and

(11) To have and exercise all powers necessary, convenient, or incidental to effect any and all purposes for which the bank or trust company and its subsidiaries and affiliates is organized, provided that the commissioner may establish approval procedures by regulation for additional powers as needed to satisfy the objectives of this chapter. Powers shall include but not be limited to: sale of securities, annuities, and other investment products upon the order of and for the account of its customers, subject to applicable federal or state securities requirements; sale of insurance subject to state insurance laws, regulations, and licensing requirements, applicable federal laws, and departmental regulations and policies; sale or lease of excess computer capacity; expansion of customer services through the use of technology; other powers including those bank and trust powers authorized to subsidiaries of the bank or trust company pursuant to subparagraph (c)(2)(F) of Code [Section 7-1-288](#); and other such powers to carry on banking, trust, or other activities determined by the commissioner to be financial in nature or incident or

complementary to such financial activities and consistent with the objectives of this chapter and the regulations of the department.

(Ga. L. 1898, p. 78, 3; Civil Code 1910, 2817; Ga. L. 1917, p. 56, 1; Ga. L. 1919, p. 135, art. 17, 1; Ga. L. 1920, p. 76, 1; Code 1933, 13-1801, 109-201; Code 1933, 13-1802, enacted by Ga. L. 1968, p. 1044, 1; Code 1933, 41A-1202, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1983, p. 602, 4; Ga. L. 1989, p. 1249, 2; Ga. L. 1995, p. 673, 12; Ga. L. 1996, p. 6, 7; Ga. L. 1997, p. 485, 11; Ga. L. 2000, p. 174, 4.)

7-1-262. Power to hold real estate; prior approval of acquisitions.

(a) A bank or trust company may solely or jointly with other persons or corporations acquire and hold such real property as it:

(1) Occupies or intends to occupy primarily for the transaction of its business, the business of any subsidiary or affiliate, or the recreational use of its employees or partly so occupies and partly leases;

(2) Acquires for the purpose of providing parking or other facilities primarily for the use of its tenants, customers, officers, and employees; or

(3) Acquires with others for the purpose of providing data processing facilities or other support services for the bank or trust company or any subsidiary solely or in cooperation with others,

subject to the limitation that the investment of the bank or trust company in all such real property, in all furniture, fixtures, and equipment acquired in connection with any real property owned or leased by the bank or trust company, in all alterations of buildings on real property owned or leased by the bank or trust company, in all shares of corporations organized for the purpose of holding real estate in the categories described above where the bank or trust company or a subsidiary of the bank or trust company owns 25 percent or more of such shares outstanding, in obligations of or for the benefit of such corporations or loans upon the security of the shares of such corporations or, to the extent of the bank's or trust company's pro rata interest, the security of the real estate itself, and in all real estate, furniture, fixtures, or equipment held beyond the limits specified in Code [Section 7-1-263](#) shall not exceed 60 percent of the statutory capital base of the bank or trust company, or such larger amount as may be approved by the department.

(b) All acquisitions of real property for purposes authorized above must be accorded prior written approval by the department in advance of the acquisition except to the extent authorized by regulation.

(Ga. L. 1898, p. 78, 3; Civil Code 1910, 2817; Ga. L. 1917, p. 56, 1; Ga. L. 1919, p. 135, art. 19, 24; Ga. L. 1920, p. 76, 1; Code 1933, 13-2024, 109-201; Ga. L. 1963, p. 512, 1; Ga. L. 1972, p. 1242, 1; Code 1933, 41A-1203, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1975, p. 445, 16; Ga. L. 1989, p. 1249, 3.)

7-1-263. Property held to avoid loss.

A bank or trust company may acquire and hold property for the purpose of avoiding loss as specified in paragraph (8) of Code [Section 7-1-261](#), subject to:

(1) A determination by a majority vote of its directors at least once each year as to the advisability of retaining any such property, provided that no such property may be held for more than five years without the prior written approval of the department; and

(2) Disposition within a period of six months after the date of acquisition or such longer period as the department may approve in writing of shares of its own stock so acquired and of shares of stock of any bank, bank holding company, or trust company held after such acquisition.

(Ga. L. 1898, p. 78, 3; Civil Code 1910, 2817; Ga. L. 1917, p. 56, 1; Ga. L. 1919, p. 135, art. 19, 22-24; Ga. L. 1920, p. 76, 1; Ga. L. 1924, p. 76, 1; Ga. L. 1927, p. 195, 10; Code 1933, 13-2022, 13-2023, 13-2024, 109-201; Ga. L. 1946, p. 65, 1; Ga. L. 1947, p. 501, 1; Ga. L. 1950, p. 18, 1; Ga. L. 1951, p. 284, 1; Ga. L. 1957, p. 275, 1; Ga. L. 1958, p. 133, 1; Ga. L. 1959, p. 238, 1; Ga. L. 1962, p. 95, 1; Ga. L. 1963, p. 512, 1; Ga. L. 1965, p. 523, 1; Ga. L. 1966, p. 590, 8; Ga. L. 1968, p. 1162, 1; Ga. L. 1969, p. 976, 1; Ga. L. 1972, p. 1242, 1; Code 1933, 41A-1204, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1981, p. 1366, 6.)

PART 3 POWERS OF BANKS

7-1-280. Major banking powers.

Subject to restrictions contained in this chapter or in its articles, a bank shall have the power:

(1) To receive money or commercial paper for deposit and to provide by its rules or by agreement for the terms of withdrawal and interest thereon;

(2) To act as an agent to collect checks, drafts, and other items of commercial paper and in exercising this power to become a member of a clearing-house and grant security interests in its assets for its qualification therein;

(3) To lend money and discount or purchase evidence of indebtedness and agreements for the payment of money and to take security title or security interests in real or personal property to secure obligations owing thereunder;

(4) To service loans made by it or by others whether or not held by the bank;

(5) To issue, advise, and confirm letters of credit authorizing the beneficiaries thereof to draw upon the bank or its correspondents;

(6) To receive money for transmission;

(7) To buy and sell exchange, coin, and bullion; and

(8) To provide third-party payments services.

(Ga. L. 1919, p. 135, art. 17, 1; Code 1933, 13-1801; Code 1933, 41A-1301, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1985, p. 258, 4; Ga. L. 1986, p. 458, 5.)

7-1-281. Participation in federal programs.

Any bank may:

(1) Become a member of the Federal Reserve System and conform to the rules and regulations of that system and the federal reserve bank of which it is a member;

(2) Become an insured bank pursuant to the Federal Deposit Insurance Act and take all action necessary to the maintenance of insured status thereunder;

(3) Apply for and obtain insurance on loans pursuant to national housing legislation.

(Ga. L. 1919, p. 135, art. 19, 38; Code 1933, 13-2038; Code 1933, 41A-1302, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1975, p. 445, 17; Ga. L. 1984, p. 22, 7.)

7-1-282. Direct leasing of personal and real property.

Notwithstanding any other provision of law to the contrary and subject to such regulations as the department may prescribe, a bank may:

(1) Become the owner and lessor of personal property acquired upon the specific request and for the use of a customer and may incur such additional obligations as may be incident to becoming an owner and lessor of such property. At the end of any lease, the bank shall, within six months, enter into a new lease with respect to the property or dispose of it. The leasing shall constitute an indebtedness under Code [Section 7-1-285](#) and shall be subject to the lending limitations of such Code section;

(2) Become the owner and lessor of certain public real property and facilities. A bank may purchase or construct a municipal building, school building, or other similar state, local, or other governmental authority facility if, as holder of legal title, such purchase is for the purpose of

leasing the facility to a municipality or other public or governmental authority which has the authority to enter into such lease, is authorized to levy taxes or is backed by the taxing authority of another political subdivision, and has the resources sufficient to make lease payments as they come due. The lease agreement must provide that the lessee will become the owner of the building or facility upon the expiration of the lease; and

(3) Become the owner and lessor of real property acquired upon the specific request and for the use of a customer or an affiliate thereof and may incur such additional obligations as may be incidental to becoming an owner and lessor of such property. The lessee, or an affiliate thereof, shall be responsible for any and all construction of buildings or other improvements related to such real property. Any lease with respect to such real property shall provide that the lessee thereof shall be responsible for maintaining the property, insuring the property, and paying real estate taxes related to the property. At the end of any lease, the bank shall, within six months, enter into a new lease with respect to the property or dispose of it. The leasing shall be subject to credit approval by the bank in a manner substantially similar to a loan and shall constitute an indebtedness under Code [Section 7-1-285](#) and shall be subject to the lending limitations of such Code section. The assignment of any purchase contract, or the right to purchase real property thereunder, by the lessee or an affiliate thereof to the bank shall not affect the entitlement of any real estate broker to any real estate brokerage commissions owing upon the sale of such real property.

(Ga. L. 1919, p. 135, art. 19, 22; Code 1933, 13-2022; Ga. L. 1966, p. 590, 8; Code 1933, 41A-1303, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1999, p. 674, 4; Ga. L. 2000, p. 174, 5; Ga. L. 2001, p. 4, 7; Ga. L. 2004, p. 458, 3.)

7-1-283. Participations.

(a) A bank may purchase and may sell participations in:

(1) One or more evidences of indebtedness or agreements for the payment of money, subject to regulations by the department; or

(2) Pools of evidences of indebtedness or agreements for the payment of money, subject to regulations by the department.

(b) The department may prohibit the sale of any type of participation to the public or otherwise not in the usual course of banking business, except as permitted by other provisions of this chapter.

(Code 1933, 41A-1304, enacted by Ga. L. 1974, p. 705, 1.)

7-1-284. Acceptances.

(a) A bank may accept drafts upon it having not more than nine months' sight to run arising out of transactions involving:

(1) The import or export of goods;

(2) The domestic shipment of goods, if secured by documents of title covering such goods; or

(3) The storage of readily marketable staples, if secured by documents of title covering such staples.

(b) The aggregate amount of acceptances under subsection (a) of this Code section shall not at any time exceed, for all such acceptances on behalf of one customer, 15 percent of the statutory capital base of the bank, exclusive of any acceptance secured by documents of title or other security growing out of the same transaction as the acceptance.

(c) In addition, a bank may, with the prior approval of the department, accept drafts having not more than three months' sight to run drawn upon it by banking institutions or bankers in foreign countries or in dependencies or insular possessions of the United States for the purpose of creating dollar exchange as required in an aggregate amount which shall not at any time exceed:

(1) For all such acceptances on behalf of a single banking institution or banker, 10 percent of the statutory capital base;

(2) For all such acceptances, 50 percent of the statutory capital base, provided that the department may, by regulation, impose additional restrictions on the acceptance of drafts under this subsection.

(Ga. L. 1919, p. 135, art. 19, 20; Code 1933, 13-2020; Code 1933, 41A-1305, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1976, p. 275, 1; Ga. L. 1981, p. 1366, 7; Ga. L. 1983, p. 602, 5.)

7-1-285. Limits on obligations of one person or corporation.

(a) A bank shall not at any time:

(1) Make loans to any one person or corporation; or

(2) Have obligations owing to it from any one person or corporation as a result of purchasing or discounting evidences of indebtedness or agreements for the payment of money, where the aggregate of said loans and obligations together exceeds 15 percent of the statutory capital base of the bank unless each loan, discount, or purchase transaction in excess of said 15 percent limit is approved in advance by the board of directors or a committee authorized to act for it.

(b) Except as provided in subsection (c) of this Code section, a bank shall not directly or indirectly make loans to any one person or corporation which in aggregate exceed 15 percent of the statutory capital base of the bank unless the entire amount of such loans is secured by good collateral or other ample security and does not exceed 25 percent of the statutory capital base. Except as otherwise indicated in subsection (c) of this Code section, the purchase or discount of agreements for the payment of money or evidences of indebtedness shall be regarded as indirect loans to the person or corporation receiving the proceeds of such transactions. In estimating the legal lending limit for any individual person, loans to related corporations, partnerships, and other entities shall be combined subject to regulations established by the department.

(c) The limitations of subsection (b) of this Code section shall not apply to:

(1) Obligations arising from the purchase or discount of drafts drawn in good faith against actually existing values or commercial or business paper actually owned by the person negotiating the paper to the extent of 25 percent of the statutory capital base of the bank;

(2) Obligations arising from the bona fide purchase of commercial or business paper, subject to restrictions which the department may impose by regulation, taken in sale or service transactions incident to a business where the party to whom the goods or services are provided is obligated on the paper;

(3) Obligations in the form of bona fide loans upon the security of agricultural, manufactured, or industrial products or livestock (or documents of title covering such property) for which there is a ready sale in open market, provided no more than 80 percent of the market value of such products is loaned or advanced thereon, the bank has the right to demand additional collateral to maintain this ratio and does so maintain it, and the bank's interest in such collateral is fully protected by insurance against loss by fire and other standard hazards; and provided, further, that such obligations shall qualify for exemption for not more than ten months if secured by nonperishable staples and for not more than six months if secured by frozen or refrigerated staples;

(4) Obligations of and obligations guaranteed by:

(A) The United States;

(B) The State of Georgia or a public body thereof authorized to levy taxes; or

(C) Any state of the United States or any public body thereof if the obligations or guarantees are general obligations;

(5) Obligations to the extent secured by:

(A) Obligations specified in paragraph (6) of this subsection;

(B) Obligations which the bank would be authorized to acquire without limit as investment securities pursuant to Code [Section 7-1-287](#);

(C) Obligations fully guaranteed by the United States;

(D) Guaranties or commitments or agreements to take over or purchase made by any public body of the United States or any corporation owned directly or indirectly by the United States; or

(E) Loan agreements between a local public agency or a public housing agency and an instrumentality of the United States pursuant to national housing legislation under which funds will be provided for payment of the obligations secured by such loan agreements;

(6) Obligations in the form of investment securities acquired pursuant to Code [Section 7-1-287](#);

(7) Obligations with respect to acceptances under Code [Section 7-1-284](#);

(8) Obligations with respect to the sale of federal or correspondent funds to financial institutions having their deposits insured to the same extent as that required of similar institutions chartered in this state; and

(9) A renewal or restructuring of a loan as a new loan or extension of credit following the exercise by the bank of reasonable efforts, consistent with safe and sound banking practices, to bring the loan into conformance with the lending limits of this Code section, unless:

(A) New funds are advanced by the bank to the borrower, except as permitted under this Code section;

(B) A new borrower replaces the original borrower; or

(C) The department determines that a renewal or restructuring was undertaken as a means to evade the bank's lending limit.

(d) In lieu of following the limitations contained in subsections (a) through (c) of this Code section, a bank may petition the department for approval to utilize limits applicable to national banks regarding obligations of a single person or corporation.

(e) The department may, by regulation not inconsistent with this Code section, prescribe definitions of and requirements for transactions included in or excluded from the indebtedness to which this Code section applies. The department may also by regulation prescribe less restrictive limitations than those listed in subsections (a) through (c) of this Code section for banks meeting certain financial and management criteria. In addition, the department may, by regulation or otherwise, specify that the liabilities of a group of one or more persons or corporations or both shall be considered as owed by one person or corporation for the purposes of this Code section because the group relies substantially on a common source for the payment of its obligations or makes common use of funds received by it, or meets other criteria established by the department for the combination of indebtedness for legal lending limitation purposes.

(Ga. L. 1919, p. 135, art. 19, 13; Ga. L. 1922, p. 63, 1; Ga. L. 1927, p. 195, 9; Code 1933, 13-2013; Ga. L. 1943, p. 254, 1; Ga. L. 1951, p. 201, 1; Ga. L. 1955, p. 414, 1; Ga. L. 1966, p. 590, 7; Ga. L. 1969, p. 603, 1; Ga. L. 1973, p. 526, 4; Code 1933, 41A-1306, enacted by Ga.

L. 1974, p. 705, 1; Ga. L. 1981, p. 1366, 8; Ga. L. 1982, p. 3, 7; Ga. L. 1983, p. 602, 6; Ga. L. 1992, p. 6, 7; Ga. L. 2000, p. 174, 6; Ga. L. 2010.)

7-1-286. Real estate loans; acquisition by bank or trust company of ownership interest.

(a) A bank shall make loans secured by improved or unimproved real estate (including a leasehold) subject to the provisions of Part 365 of the Federal Deposit Insurance Corporation's rules and regulations, including 12 C.F.R. 365.1 and 365.2 and the Interagency Guidelines for Real Estate Lending Policies in Appendix A and 12 C.F.R. 208.51 and the guidelines contained in 12 C.F.R. Part 208 in the case of Federal Reserve member banks. Such loans shall also be subject to the additional provisions and exceptions as set forth in the rules of the department.

(b) The limitations of subsection (a) of this Code section shall not apply to:

(1) An investment security acquired pursuant to Code [Section 7-1-287](#);

(2) A loan in connection with which the bank takes a real estate lien as security in the exercise of banking prudence but as to which it is relying for repayment on:

(A) The general credit of the obligor or of an installment buyer or of a lessee of the real estate;

(B) Collateral other than the real estate lien;

(C) A guaranty or an agreement to take over or purchase the loan, in the event of default, by a financially responsible person other than a person engaged in the business of guaranteeing real estate loans; or

(D) An agreement by a financially responsible person to take over or purchase the loan, or to provide funds for payment thereof, within a period of two years from the date of the loan;

and there is documentation in the file setting forth the applicable facts to support reliance on this paragraph.

(c) For the purpose of this Code section, a "leasehold" shall mean the interest, which is security for a loan, of a lessee of real estate under a lease which on the date of the loan has an unexpired term extending at least ten years beyond the maturity of the loan or contains a right of renewal, which may be exercised by the bank, extending at least ten years beyond the maturity of the loan.

(d) Notwithstanding any other provisions of this chapter and otherwise subject to regulations of the department, a bank or trust company may acquire, directly or indirectly, an ownership interest in real estate incidental to the financing of the purchase, development, or improvement of such real estate, provided:

(1) The amount of such ownership interest shall not exceed 25 percent of the appraised value of the real estate;

(2) The amount of such ownership interest when aggregated with the amount financed shall not exceed the limitations prescribed by this Code section and Code [Section 7-1-285](#);

(3) The ownership interest shall be terminated upon substantial repayment of the financing in the manner prescribed in Code [Section 7-1-263](#), relating to the divestiture of real estate interest; and

(4) Any time real estate owned by a bank or trust company pursuant to this subsection is held or disposed of pursuant to the provisions of Code [Section 7-1-263](#), said action to hold or dispose shall be reported in writing annually to the stockholders. Said report shall include disclosure of any real estate acquired by foreclosure or the taking by a deed in lieu of foreclosure and the name or names of the corporation or individuals from whom title was taken.

(Ga. L. 1919, p. 135, art. 19, 15; Code 1933, 13-2015; Ga. L. 1937, p. 423, 1; Ga. L. 1945, p. 208, 1; Ga. L. 1959, p. 250, 1; Ga. L. 1965, p. 281, 1; Ga. L. 1972, p. 556, 1; Code 1933, 41A-1307, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1975, p. 445, 18; Ga. L. 1989, p. 1249, 4; Ga. L. 1992, p. 6, 7; Ga. L. 1998, p. 795, 14; Ga. L. 2000, p. 174, 7; Ga. L. 2001, p. 970, 2; Ga. L. 2007, p. 502, 2/SB 70.)

7-1-287. Dealings in securities; conflicts of interest; divestiture and fines.

Notwithstanding the limitations of Code [Section 7-1-288](#), a bank may purchase, sell, underwrite, and hold securities which are obligations in the form of bonds, notes, or debentures or mutual funds, investment trusts, or pools primarily consisting of such bonds, notes, or debentures, and may purchase, sell, and hold corporate debt obligations, to the extent authorized by regulations of the department. The department may issue regulations which prescribe operating restrictions and standards of conduct dealing with potential conflicts of interest and shall prescribe rules for divestiture of securities held in violation of such regulations and fines for violations not to exceed \$10,000.00 per day during which each violation remains uncorrected. A bank may hold without limit securities which are obligations of the United States or obligations which are guaranteed fully as to principal and interest by the United States or general obligations of any state.

(Ga. L. 1919, p. 135, art. 19, 23; Ga. L. 1924, p. 76, 1; Ga. L. 1927, p. 195, 10; Code 1933, 13-2023; Ga. L. 1946, p. 65, 1; Ga. L. 1947, p. 501, 1; Ga. L. 1950, p. 18, 1; Ga. L. 1951, p. 284, 1; Ga. L. 1957, p. 275, 1; Ga. L. 1958, p. 133, 1; Ga. L. 1959, p. 238, 1; Ga. L. 1962, p. 95, 1; Ga. L. 1965, p. 523, 1; Ga. L. 1968, p. 1162, 1; Ga. L. 1969, p. 976, 1; Code 1933, 41A-1308, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1989, p. 1249, 5; Ga. L. 1999, p. 674, 5.)

7-1-288. Corporate stock and securities.

(a) A bank may engage in any transaction with respect to shares of stock or other capital securities of any corporation in accordance with this Code section and in other instances as provided in state or federal law.

(b) A bank may:

(1) Engage in transactions with respect to issuance and transfer of shares of its own stock and capital securities and in other transactions with respect to such stock and capital securities authorized by this chapter;

(2) Purchase and sell shares of stock, bonds, capital securities, and other investment products upon the order of and for the account of a customer without recourse against it;

(3) Receive a pledge or other security interest in stock or capital securities in order to secure loans made in good faith, except that it may not receive such interests in its own stock or capital securities nor lend in one or more transactions, involving one or more borrowers, more than 30 percent of its statutory capital base on the stock or capital securities of any corporation (including therein loans made directly to the corporation without ample security but excluding obligations representing the sale of federal or correspondent funds to another financial institution). The department may, by regulation or otherwise, specify that two or more corporations are so interrelated that their stock shall be regarded as the stock of one corporation for the purposes of this subsection.

(c) Notwithstanding any other provisions of law to the contrary, a bank may acquire and hold for its own account:

(1) Shares of stock of a federal reserve bank without limitation of amount;

(2) Shares of stock or interests in:

(A) Any state or federal government sponsored instrumentality for the guarantee, underwriting, or marketing of residential housing or financing of residential housing;

(B) A business development corporation or small minority business development corporation authorized under Article 6 of this chapter;

(C) An agricultural credit corporation duly organized under the laws of this state having authority to make loans to farmers of this state for agricultural purposes under programs administered by the federal farm credit system;

(D) A bank service corporation created to provide support services for one or more financial institutions;

(E)(i) A bank principally engaged in foreign or international banking or banking in a dependency or insular possession of the United States, either directly or through the agency, ownership, or control of local institutions in foreign countries or in such dependencies or insular possessions, including the stock of one or more corporations existing pursuant to Section 25(a)

of the Federal Reserve Act, provided that, before a bank may purchase a majority interest in any such banking institution, it shall enter into an agreement with the department to restrict its operations in such manner as the department may prescribe; and provided, further, that, if the department determines that said restrictions have not been complied with, it may order the disposition of said stock upon reasonable notice.

(ii) A bank engaged in providing banking or other financial services to depository financial institutions, which bank's ownership consists primarily of such depository financial institutions;

(F) A corporation or limited liability company engaged in functions or activities that the bank or trust company is authorized to carry on, including, but not limited to: conducting a safe-deposit business; holding real estate; acting as a financial planner or investment adviser; offering of a full range of investment products; promoting and facilitating international trade and commerce; and exercising powers incidental to financial activities as provided in paragraph (11) of Code [Section 7-1-261](#); in addition to functions or activities which include exercising powers granted by department regulations or exercising powers determined by the commissioner to be financial in nature or incidental to the provision of financial services, so long as these activities do not pose undue risk to the safety and soundness of the financial institution and are consistent with the objectives of this chapter as stated in Code [Section 7-1-3](#); provided, however, unless the bank is exempt, nothing contained in this subparagraph shall relieve any such corporation or limited liability company from undertaking registration, licensing, or other qualification to engage in such functions or activities as may otherwise be required by law; and

(G) Other corporations created pursuant to act of Congress or pursuant to [Chapter 3 of Title 14](#), known as the "Georgia Nonprofit Corporation Code," for the purpose of meeting the agricultural, housing, health, transit, educational, environmental, or similar needs where the department determines that investment therein by banks is in the public interest;

(3) Shares of stock of small business investment companies organized under acts of Congress and doing business in this state, provided that the aggregate investment by the bank in such shares shall not exceed 5 percent of its statutory capital base; and

(4) Shares of stock or partnership interests in a corporation or partnership the primary business of which, as determined by the department, is to promote the public welfare or community development by engaging in the development of low and moderate-income housing, job training and job placement programs, credit counseling, public education regarding financial matters, small business development, and other similar purposes. The ability to invest in such stock or partnership interests shall also be subject to such limitations and approval procedures as the department deems necessary in order to assure that such investments are not a safety and soundness concern.

(d) A bank acquiring stock or an interest in an entity listed in paragraph (2) of subsection (c) of this Code section shall be subject to the following limitations:

(1) Where the entity carries on only such activities as the bank could legally perform itself, there is no limitation on investment;

(2) Where the activities of the entity go beyond those that the bank could legally perform, the bank's investment may not exceed 10 percent of its statutory capital base; and

(3) Where the investment is in stock of the Federal Home Loan Bank, there is no limitation on the bank's investment, provided such investment is for the purpose of utilizing the services of the Federal Home Loan Bank.

(e) Prior approval by the department is required for acquisitions listed in subparagraphs (c)(2)(D) through (c)(2)(G) of this Code section. The department, by regulation, may permit expedited or notice only procedures and may provide for applicable administrative fees.

(f) The department may by rule or regulation prescribe less restrictive investment limitations than those contained in this Code section for banks meeting certain financial and management criteria.

(Ga. L. 1919, p. 135, art. 19, 20, 23; Ga. L. 1924, p. 76, 1; Ga. L. 1927, p. 195, 10; Code 1933, 13-2017, 13-2023; Ga. L. 1946, p. 65, 1; Ga. L. 1947, p. 501, 1; Ga. L. 1950, p. 18, 1; Ga. L. 1951, p. 284, 1; Ga. L. 1953, Nov.-Dec. Sess., p. 328, 1; Ga. L. 1957, p. 275, 1; Ga. L. 1958, p. 133, 1; Ga. L. 1959, p. 238, 1; Ga. L. 1959, p. 328, 1; Ga. L. 1962, p. 95, 1; Ga. L. 1965, p. 523, 1; Code 1933, 13-2023.1, enacted by Ga. L. 1968, p. 1042, 1; Ga. L. 1968, p. 1162, 1; Ga. L. 1969, p. 976, 1; Ga. L. 1972, p. 798, 6; Code 1933, 41A-1309, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1975, p. 445, 19; Ga. L. 1977, p. 730, 3; Ga. L. 1979, p. 953, 1; Ga. L. 1983, p. 602, 7; Ga. L. 1984, p. 22, 7; Ga. L. 1987, p. 1586, 4; Ga. L. 1989, p. 1249, 6; Ga. L. 1995, p. 673, 13; Ga. L. 1996, p. 6, 7; Ga. L. 1997, p. 143, 7; Ga. L. 1997, p. 485, 12; Ga. L. 1999, p. 674, 6; Ga. L. 2000, p. 174, 8; Ga. L. 2001, p. 970, 3; Ga. L. 2002, p. 1220, 5; Ga. L. 2005, p. 826, 7/SB 82.)

7-1-289. Security for deposits.

(a) A bank may, unless otherwise specifically approved in writing by the department, pledge or otherwise grant security interests in its assets to secure deposits of:

(1) Public funds;

(2) Funds of a pension fund for employees of a public body of the state;

(3) Funds for which a public body of the state or an officer or employee thereof or any court of law is the custodian or trustee pursuant to statute;

(4) Funds held by the department as receiver;

(5) Funds which are required to be secured by law or by an order of a court;

(6) Its own fiduciary funds or the fiduciary funds of an affiliate. In either case, the funds shall be deposited with the pledging institution and held in its commercial department; and

(7) Public funds deposited in another bank.

(b) A bank may not pledge or otherwise grant security interests in its assets as security for deposits other than the deposits listed in subsection (a) of this Code section.

(Code 1933, 13-2068, enacted by Ga. L. 1973, p. 526, 8; Code 1933, 41A-1310, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1993, p. 929, 1; Ga. L. 1995, p. 673, 14.)

7-1-290. Powers as surety or guarantor.

(a) Except as authorized in subsection (b) of this Code section, in paragraph (10) of Code [Section 7-1-260](#), and in paragraph (4) of Code [Section 7-1-261](#), a bank shall not lend its credit, bind itself as a surety to indemnify another, or otherwise become a guarantor.

(b) A bank may act as a surety or guarantor if it has a substantial interest in the performance of the transaction involved or has a segregated deposit sufficient in amount to cover the institution's potential liability.

(c) Nothing in this Code section shall be construed to prohibit banks from:

(1) Giving warranties or guaranties in connection with the handling of items for collection; the transfer, exchange, or collection of securities; or the sale or disposition of its assets;

(2) Issuing letters of credit; and

(3) Pledging or otherwise granting security interests in their assets to secure public funds deposited in another bank.

(d) Notwithstanding other provisions of law to the contrary, irrevocable letters of credit issued by banks domiciled in this state may, in the discretion of the party in whose favor such irrevocable letter of credit is issued, be accepted in lieu of any bond, surety, or pledge of assets required by the laws of this state or regulations promulgated pursuant to such laws.

(Code 1933, 41A-1311, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1983, p. 602, 8; Ga. L. 1989, p. 1211, 5; Ga. L. 1993, p. 929, 2.)

7-1-291. Borrowings; liabilities not subject to restrictions; restrictions; borrowing for emergencies.

(a) Subject to the restrictions of subsection (c) of this Code section, a bank may borrow money and issue notes, debentures, or other obligations to evidence such borrowings.

(b) The following outstanding liabilities are not subject to the restrictions in this Code section:

- (1) Liabilities to a federal reserve bank on account of money borrowed or rediscounts;
- (2) Liabilities on account of the acquisition of reserve balances at a federal reserve bank or other reserve agent from a member or a nonmember bank;
- (3) Liabilities on account of agreements to repurchase securities sold by the bank (commonly known as "repurchase agreements");
- (4) Liabilities in the form of subordinated securities under Code [Section 7-1-419](#); and
- (5) Liabilities which do not constitute or result from the borrowing of money under definitions prescribed by regulation of the department.

(c) A bank that wishes to borrow from sources other than those listed in subsection (b) of this Code section may borrow an aggregate amount which exceeds the sum of twice its unimpaired capital stock plus 100 percent of its unimpaired paid-in capital, appropriated retained earnings, and retained earnings, provided the bank's board of directors has approved a comprehensive written funding plan that addresses the following safety and soundness concerns:

- (1) The plan must contain a detailed evaluation of the bank's management expertise and information systems to support the plan; and
- (2) The plan must contain adequate asset and liability, liquidity, and funds management policies and procedures to specifically address the use of borrowings as an alternate funding source.

(d) The department may, notwithstanding the other provisions of this Code section, temporarily waive the requirements of this Code section to permit an individual bank to borrow for emergency purposes. The department shall review the funding plan of each bank as a part of its normal supervisory program. The department may prohibit or place additional restrictions upon borrowings of any bank which would, in the judgment of the department, constitute an unsafe or unsound practice in view of the condition and circumstances of the bank.

(Ga. L. 1919, p. 135, art. 19, 25; Code 1933, 13-2025; Ga. L. 1966, p. 590, 9; Ga. L. 1973, p. 526, 5; Code 1933, 41A-1312, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1975, p. 445, 20; Ga. L. 1996, p. 848, 5.)

7-1-292. Interest and fees.

Any bank may take, receive, reserve, and charge interest and fees on any loan, advance of money, or forbearance to enforce the collection of money at rates not exceeding the limits set by the laws of this state. Whenever such laws authorize a special interest or fee rate with respect to a

designated type of loan, then a bank may charge that special interest or fee on loans of that type made by it. Whenever such laws authorize a person or a corporation other than a bank to charge a special interest or fee rate with respect to a designated type of loan, then a bank may charge such rate or fee on loans made by it which would qualify as the designated type of loan if made by the person or corporation so authorized without any requirement for the bank to obtain any license, qualification, or permit.

(Ga. L. 1919, p. 135, art. 19, 19; Code 1933, 13-2019; Code 1933, 41A-1313, enacted by Ga. L. 1974, p. 705, 1.)

7-1-293. Savings banks and state savings and loan associations.

(a) A bank desiring to be accorded treatment under this chapter as a savings bank or state savings and loan association shall so state in its articles.

(b) A savings bank or a state savings and loan association may apply to the department for permission to relinquish its status as a savings bank or state savings and loan association and become a commercial bank by filing an appropriate amendment to its articles. The department may exercise its discretion in determining whether to approve such a change and shall consider in connection therewith the same criteria considered in approving the original articles of incorporation.

(c) A savings bank shall provide its depositors with deposit insurance coverage pursuant to those deposit insurance provisions of this chapter applicable to commercial banks. A state savings and loan association shall provide its depositors, but not its shareholders, with deposit insurance coverage pursuant to those deposit insurance provisions of this chapter applicable to building and loan associations.

(d)(1) Unless specifically exempt therein, all rules and regulations promulgated by the department and applicable to commercial banks shall be applicable to a savings bank.

(2) The commissioner shall not approve an application of a financial institution requesting conversion to a commercial bank or a mutual savings bank unless such financial institution divests itself of all branches which were not lawfully established and in existence prior to July 1, 1996, or which do not conform with the branch banking laws of this state if established on or after July 1, 1996. Any federal mutual savings bank or federal mutual savings and loan association with a banking location in Georgia prior to July 1, 1996, which converts to a state charter, shall be entitled to retain the banking locations lawfully established in Georgia which conform to the limitations of this subsection.

(e) The conversion, merger, or consolidation of a federal savings and loan association or federal savings bank, including a federal mutual savings and loan association or federal mutual savings bank, shall be accomplished pursuant to the same procedures as are prescribed in this chapter for a conversion, merger, or consolidation involving a national bank, provided that any federal mutual savings bank or federal mutual savings and loan association converting to a

Georgia mutual savings bank must have been in existence on January 1, 1997, and must have had its main office in the State of Georgia; and provided, further, that the approval of such conversion by the members of such association or bank shall be by such vote as is required in the articles of association and bylaws of such association or bank. A federal mutual savings and loan association or federal mutual savings bank shall upon conversion be and be known as a mutual savings bank. Conversion of a building and loan association into a savings bank or state savings and loan association may be made with the approval of the department and an appropriate amendment of the articles of incorporation of the association. In considering any plan for the conversion, merger, or consolidation of a federal savings and loan association or federal savings bank or conversion of a building and loan association, the department shall not approve the plan unless it is satisfied that such plan is fair and equitable to all borrowers, depositors, and shareholders.

(f)(1) The conversion, merger, or consolidation of a federal mutual savings and loan association holding company or federal mutual savings bank holding company shall be accomplished pursuant to the same procedures as are prescribed in this chapter for a conversion, merger, or consolidation involving a national bank, provided that the approval of such conversion shall be by such vote of the members of such holding company as is required in the articles of association and bylaws of such holding company but shall be further conditioned upon the conversion of the federal savings and loan association or federal savings bank subsidiary of such holding company to a savings bank contemporaneously with the holding company's conversion.

(2) A state mutual savings bank holding company shall be subject to all of the rules and regulations of the department as if it were a commercial bank organized under this chapter, provided that it shall be authorized to own the stock of a savings bank subsidiary.

(g) With respect to the corporate governance of a mutual savings bank or mutual savings bank holding company, the members of the savings bank or holding company as defined in the articles of association, subject to the approval of the department, shall be the equivalent of the shareholders of a commercial bank or bank holding company having such rights, preferences, and powers and subject to such limitations as may be contained in the rules and regulations of the department and in the articles of association and bylaws of the savings bank or holding company approved by the department.

(h) Except as provided therein, Article 1 of this chapter and all other parts of this article shall apply to all mutual savings banks, savings banks, and state savings and loan associations.

(i) Unless otherwise provided, the provisions of Part 18 of this article applicable to bank holding companies shall be applicable to mutual savings bank holding companies and unless specifically exempt therein, all rules and regulations promulgated by the department applicable to bank holding companies shall be applicable to mutual savings bank holding companies.

(j) In the event that a federal mutual savings and loan association or federal mutual savings bank upon conversion to a savings bank would own or hold assets or engage in any business that would not be allowable for a commercial bank, then the plan of conversion presented to the department shall include a plan for disposal of such assets or the termination of such

nonconforming business within a reasonable time but in no event longer than four years from the date of the conversion.

(Code 1933, 41A-1314, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1981, p. 1566, 2; Ga. L. 1982, p. 3, 7; Ga. L. 1982, p. 1781, 1; Ga. L. 1983, p. 602, 9; Ga. L. 1987, p. 1586, 5; Ga. L. 1988, p. 13, 7; Ga. L. 1992, p. 6, 7; Ga. L. 1997, p. 485, 13.)

7-1-294. Transaction of business on holidays and outside of banking hours.

Notwithstanding any existing provisions of law relative to the time of maturity or presentment of negotiable instruments, any financial institution doing business in this state may, at its option, outside of regular banking hours on any day, or at any time on a day which is in whole or in part a holiday, pay, certify, or accept negotiable or nonnegotiable instruments including a demand instrument dated on the holiday on which it is presented for payment, certification, or acceptance and transact any other business which would be valid if done on a business day during regular banking hours; provided, however, that nothing herein contained shall authorize the transaction of business on Sundays.

Nothing herein contained shall require any financial institution which remains open for business on all or a part of any holiday to do or perform any act on that day in its capacity as a collection agent which would not be required of it if it were closed on such holiday or part holiday.

(Code 1933, 14-1809.2, enacted by Ga. L. 1949, p. 352, 1.)

7-1-295. Transaction fees charged by operators of automated teller machines.

An operator of an automated teller machine in this state may charge a transaction fee to the customer using the machine. An agreement to share automated teller machines may not prohibit, limit, or restrict the right to charge such transaction fees and no such agreement may prohibit, limit, or restrict the right of one or more financial institutions to enter into an agreement not to charge such transaction fees to their common customers.

(Code 1981, 7-1-295, enacted by Ga. L. 1993, p. 917, 3; Ga. L. 1997, p. 575, 1.)

PART 4

POWERS OF TRUST COMPANIES

7-1-310. Powers to act as fiduciary and in other representative capacities.

(a) A trust company may act, alone or with others, as:

(1) Fiduciary;

(2) Investment advisor;

(3) Custodian of property;

(4) Agent or attorney in fact;

(5) Registrar or transfer agent of securities;

(6) Fiscal agent of the United States, a state or a public body thereof, a corporation, or a person; and

(7) Treasurer of a public body or of a nonprofit corporation.

(b) A trust company shall have, in respect to any capacity in which it may act pursuant to a power under subsection (a) of this Code section, all the rights and duties which a person has in such capacity under applicable laws and under the terms upon which the trust company is designated to act in such capacity.

(c) Every bank, building and loan association, and credit union operating pursuant to this chapter shall possess all of the rights, privileges, powers, and responsibilities herein conferred upon trust companies; provided, however, that no such bank, building and loan association, or credit union shall exercise such powers and privileges without the prior written approval of the department after a careful consideration of the factors enumerated in Code [Section 7-1-394](#), relating to the chartering of trust companies. Any bank exercising or partially exercising trust powers prior to February 27, 1976, authorized by its articles may continue to exercise or partially to exercise those powers to the extent approved by the department without the necessity of obtaining a new approval.

(Ga. L. 1898, p. 78, 3; Civil Code 1910, 2817; Ga. L. 1917, p. 56, 1; Ga. L. 1919, p. 135, art. 2, 2; Ga. L. 1920, p. 76, 1; Code 1933, 109-201; Code 1933, 41A-1401, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1976, p. 274, 1; Ga. L. 1981, p. 1366, 9; Ga. L. 1982, p. 3, 7; Ga. L. 1989, p. 1257, 4.)

7-1-311. Operations as a fiduciary.

Except as otherwise permitted by Code [Section 7-1-315](#), a trust company in its capacity as fiduciary shall:

(1) Segregate all property (other than items in the course of collection) held as a fiduciary from its nonfiduciary assets and keep separate records of all such fiduciary property for each account for which such property is held;

(2) Hold property held as fiduciary in a form complying with applicable law;

(3) Keep fiduciary funds awaiting investment or distribution in deposits in an authorized financial institution (including, in the case of a trust company which is also a bank, its own commercial department or the commercial department of an affiliate as provided in Code [Section 7-1-289](#)) which is insured or, to the extent of any deficiencies in insurance coverage, fully secured by a pledge or assignment of bonds or obligations of the United States, this state, or a public body of either or other obligations guaranteed as to principal and interest by the United States, this state, or a public body of either or real estate loans secured by a first lien or security title to improved realty and insured pursuant to any title of the National Housing Act. The beneficial owners of such uninvested funds shall have a first and prior lien on such security;

(4) Not be required to execute a bond or give any security required by the law of fiduciaries but may give its own bond and pledge or otherwise grant security interests in its assets as security for the faithful performance of its duties as fiduciary or as surety for such faithful performance by any cofiduciary where such is requested or otherwise required; and

(5) Provide any oath or affirmation or any affidavit required of the trust company through an officer thereof acting on behalf of the trust company.

(Ga. L. 1935, p. 484, 1, 2; Ga. L. 1953, Jan.-Feb. Sess., p. 108, 1-3; Ga. L. 1965, p. 244, 1, 2; Ga. L. 1966, p. 468, 1; Code 1933, 41A-1402, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1988, p. 1494, 1; Ga. L. 1995, p. 673, 15.)

7-1-312. Nonfiduciary investments.

A trust company which is not a bank may, apart from its fiduciary activities, invest in stock and investment securities, except that it may not acquire or hold its own stock otherwise than pursuant to paragraphs (8) and (9) of Code [Section 7-1-261](#).

(Code 1933, 41A-1403, enacted by Ga. L. 1974, p. 705, 1.)

7-1-313. Collective investment funds.

(a) As used in this Code section, the term "collective investment fund" shall include a common trust fund and any other type of collective investment fund.

(b) A trust company may establish and maintain collective investment funds for the investment or reinvestment of property which:

(1) Is contributed by the trust company in a capacity in which it is authorized to act pursuant to Code [Section 7-1-310](#); and

(2) Is eligible for contribution to a collective investment fund under this Code section.

(c) Property shall be eligible for contribution whenever the instrument, judgment, decree, or order under which the trust company holds the property does not prohibit investment in the type of collective investment fund involved, provided that, if the trust company holds the property under circumstances limiting it to investing the property in legal investments for fiduciaries, then it may invest the property only in a collective investment fund limited to assets authorized as legal investments for a fiduciary.

(d) The department shall regulate the establishment, operation, and maintenance of collective investment funds. Such regulations of the department shall comply with the general standards for exercise of the regulatory power of the department under this chapter and, in addition, shall be designed to assure:

(1) Ratably equal treatment of the participants in a fund by imposing minimum requirements for the method and frequency of valuation of participations in the fund, for the time and method of admission or withdrawals of participations in the fund, and for the determination of interests of participants in the assets and income of the fund; and

(2) The competitive equality between trust companies and national banks exercising fiduciary powers with respect to the authority to establish and maintain collective investment funds to the extent compatible with the general purposes of this chapter.

(e) No mistake made in good faith and in the exercise of due care in connection with the administration of a collective investment fund shall be deemed a violation of this Code section or of any other duty of the trust company if, promptly after discovery of the mistake, the trust company takes whatever action may be practicable in the circumstances to remedy the mistake.

(f) Any other trust company or national bank with trust powers which is a member of an affiliated group (as defined in Section 1504 of the Internal Revenue Code) with a trust company maintaining collective investment funds may participate in one or more such funds as though they were maintained by the participating trust company. Such participation may be made pursuant to agreement providing for reasonable compensation for the trust company maintaining the fund or funds.

(g) A trust company, in any capacity in which it may act under Code [Section 7-1-310](#), may invest property collectively in accordance with the specific terms upon which it receives such property, without regard to the restrictions of this Code section.

(Ga. L. 1943, p. 442, 2, 3, 6, 8, 13, 14; Ga. L. 1972, p. 816, 2, 3; Code 1933, 41A-1404, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1987, p. 191, 9.)

7-1-314. Purchase in fiduciary capacity of securities underwritten by syndicate including institution.

A trust company or a financial institution with fiduciary powers may, in its fiduciary capacity, purchase securities underwritten by a syndicate which includes the financial institution or an affiliate of the financial institution, provided such purchase is otherwise prudent, not prohibited by the instrument governing the fiduciary relationship, and not otherwise inconsistent with regulations issued by the department.

(Code 1981, 7-1-314, enacted by Ga. L. 1983, p. 602, 10; Ga. L. 1989, p. 1249, 7.)

7-1-315. Satisfaction of fiduciary obligations respecting investment of funds awaiting investment or distribution and charging of fees.

(a) A trust company complying with this Code section will be deemed to have satisfied its fiduciary obligations and duties with respect to:

- (1) The investment of fiduciary funds awaiting investment or distribution;
- (2) The charging of fees in connection therewith; and
- (3) The disclosure of policies, procedures, and fees in connection therewith.

(b) A trust company may invest fiduciary funds awaiting investment or distribution in short-term, trust-quality investment vehicles, through the medium of a collective investment fund or otherwise. A trust company may also place fiduciary funds awaiting investment or distribution in deposits of the commercial department of such trust company, in the case of a trust company which is also a bank, or in deposits of an affiliate bank; provided, however, that the rate of interest paid on such deposits shall be at least equal to the rate paid by such department or affiliate bank on deposits of similar terms and amounts. A fiduciary shall have complied with this Code section if cash awaiting investment or distribution in excess of \$1,000.00 is invested or deposited within 30 days of receipt or accumulation thereof. The provisions of this subsection shall apply notwithstanding any other law or rule restricting or limiting the investments of fiduciaries.

(c) In addition to any other compensation to which it may be entitled, a trust company may, without necessity of obtaining the approval of any person or court, charge a reasonable fee for the temporary investment of fiduciary funds awaiting investment or distribution, which fee may be calculated upon the amount of such funds actually invested and upon the income produced thereby.

(d) A trust company shall have complied with its duty to disclose fees and practices in connection with the investment of fiduciary funds awaiting investment or distribution if the trust company's periodic statements set forth the trust company's practice and method of computing fees.

(e) This Code section shall be construed as a codification of existing law concerning the fiduciary duties of trust companies and not as a change in such law.

(Code 1981, 7-1-315, enacted by Ga. L. 1988, p. 1494, 2.)

PART 4A

AFFILIATE TRANSFERS

7-1-320. Definitions.

As used in this part, the term:

(1) "Affiliate transfer" means a transfer by which a bank or trust company delegates, assigns, or transfers to an affiliated trust company or to an affiliated bank which has received the required approvals from the appropriate regulatory authorities to exercise trust powers all of its rights, powers, privileges, accounts, and designations with respect to one or more of its various capacities as fiduciary.

(2) "Affiliated trust company" means a trust company which is affiliated with a bank. A trust company shall be considered an affiliate with a bank in accordance with the definition of such term set forth in paragraph (1) of Code [Section 7-1-4](#). For the purposes of this part, the term affiliated trust company shall also include an affiliated bank which has received the required approvals from the appropriate regulatory authorities to exercise trust powers.

(3) "Bank" means a corporation as defined in either paragraph (7) or (23) of Code [Section 7-1-4](#) and having its principal place of business in Georgia.

(4) "Fiduciary" means a bank or trust company acting in such capacity as set forth in paragraph (20) of Code [Section 7-1-4](#) or as further defined by regulations of the department.

(5) "Trust company" means a corporation as defined in paragraph (40) of Code [Section 7-1-4](#) or a national bank having:

(A) Authority to conduct business only to the extent of its trust powers as provided in 12 U.S.C. Section 92a; and

(B) A principal place of business in Georgia.

(Code 1981, 7-1-320, enacted by Ga. L. 1986, p. 1244, 1; Ga. L. 1993, p. 915, 1.)

7-1-321. Affiliate transfers authorized; powers and duties of affiliated trust company transferees.

(a) Any bank authorized by law to engage in the business of acting as a fiduciary is authorized and empowered to make an affiliate transfer whether or not each governing instrument expressly provides for or contemplates an affiliate transfer or whether or not the fiduciary capacity was created by will, indenture, trust, court order, agreement, or other means. No affiliate transfer shall constitute:

- (1) A resignation or disqualification of the bank as fiduciary; or
- (2) A relinquishment of trust powers by the bank making the affiliate transfer.

Upon execution of an instrument effecting an affiliate transfer by a bank, the affiliated trust company shall, as of the date specified in the instrument, have all of the rights, powers, privileges, appointments, accounts, and designations of the bank regarding each fiduciary capacity so transferred and shall have title to all property, real, personal, and mixed, and all debts due on whatever account, and all other choses in action, and each and every other interest of or belonging to or due to the bank as fiduciary shall be taken and deemed to be transferred to and vested in the affiliated trust company as fiduciary without further act or deed. The affiliated trust company shall file a certificate of transfer with the department setting forth its name, a copy of its governing instrument, a list of the banks with which it is affiliated, a statement of the facts which establish the affiliate relationship, and such other information as may be appropriate.

(b) Upon an affiliate transfer by a bank, the affiliated trust company, in each fiduciary capacity transferred, shall thenceforth be responsible for the performance of all of the duties, responsibilities, and obligations of the bank in such fiduciary capacity, and any claim existing or action or proceeding pending by or against the fiduciary may be prosecuted as if the affiliate transfer had not taken place and the affiliated trust company, as fiduciary, may be substituted in place of the bank, as fiduciary. Neither the rights of creditors to nor any liens upon the property held in any fiduciary capacity shall be impaired by any affiliate transfer.

(Code 1981, 7-1-321, enacted by Ga. L. 1986, p. 1244, 1; Ga. L. 1994, p. 1780, 1.)

7-1-322. Effect of affiliate transfer on bank; abandonment of transfer; substituted fiduciary.

(a) Notwithstanding the provisions of Code [Section 7-1-321](#), no affiliate transfer shall relieve the bank of any liability with respect to any of its acts and doings as fiduciary, and the bank shall remain liable and responsible to all affiliate transfer beneficiaries and other parties at interest with respect to all actions of the affiliated trust company as if performed by the bank itself.

(b) The bank shall be relieved of any claims, liabilities, or actions arising after the affiliate transfer where such affiliate transfer is expressly authorized by the terms of the instrument governing the fiduciary capacity.

(c) Upon application by an interested party, the bank shall within 30 days either abandon the affiliate transfer subject to such application or proceed to have a successor fiduciary appointed as provided by law.

(d) Nothing in this Code section shall be construed to impair any right of the grantor or beneficiaries of any fiduciary relationship under applicable instruments or otherwise to secure or provide for the appointment of a substituted fiduciary.

(Code 1981, 7-1-322, enacted by Ga. L. 1986, p. 1244, 1.)

7-1-323. Appointment of affiliated trust company as agent for bank; liability of bank for actions of agent.

In addition to and not in limitation of the other powers provided in this part, any bank shall be entitled and empowered to designate an affiliated trust company as its agent for the performance of all acts, obligations, and responsibilities of the bank with respect to any fiduciary capacity. In such event, the bank shall remain fully responsible and liable with respect to all actions of the affiliated trust company as if performed by the bank itself. No such agency relationship shall:

(1) Be deemed an impermissible delegation of responsibility or duty by the bank; or

(2) Constitute a resignation or disqualification of the bank as fiduciary or a relinquishment of trust powers by the bank.

(Code 1981, 7-1-323, enacted by Ga. L. 1986, p. 1244, 1; Ga. L. 1992, p. 6, 7.)

7-1-324. Designation of affiliate trust company as successor fiduciary.

Upon any affiliate transfer, the affiliate trust company may be designated in any deed, trust, agreement, filing, instrument, notice, certificate, pleading, or other document as successor fiduciary pursuant to this part.

(Code 1981, 7-1-324, enacted by Ga. L. 1986, p. 1244, 1.)

7-1-325. Other banking laws unaffected by part.

Except as expressly provided, nothing in this part shall be construed to amend or modify in any way the laws of the State of Georgia with respect to the establishment of banks, trust companies, branch banks, or bank holding companies or the conduct of the banking business or any part thereof.

PART 5

FIDUCIARY INVESTMENT COMPANIES

7-1-330. Definitions.

As used in this part, the term:

(1) "Fiduciary investment company" means a corporation which is an investment company as defined by the act of Congress entitled "Investment Company Act of 1940" and is incorporated in accordance with [Chapter 2](#) of [Title 14](#) so as to constitute a medium for the investment of funds held by trust institutions and foreign trust institutions in a fiduciary capacity, either alone or with one or more cofiduciaries.

(2) "Foreign trust institution" means any state banking institution or trust company organized under the laws of any state other than Georgia or any national banking association incorporated under the laws of the United States and having its principal office in some state other than Georgia which has trust powers and is authorized to act in a fiduciary capacity under the laws under which it was incorporated.

(3) "Investment adviser" of a fiduciary investment company means:

(A) Any trust institution which, pursuant to contract with a fiduciary investment company possessing the qualifications provided by this part, regularly furnishes advice to such investment company with respect to the desirability of investing in, purchasing, or selling securities or other property or is empowered to determine what securities or other property shall be purchased or sold by such investment company; and

(B) Any person or corporation other than a trust institution, who, pursuant to contract with such trust institution, regularly performs substantially all of such duties undertaken by such trust institution.

(4) "Trust institution" means any trust company or any national bank with its principal office located in this state, authorized to act as a fiduciary.

(Ga. L. 1970, p. 515, 1; Ga. L. 1971, p. 639, 1, 2; Ga. L. 1973, p. 549, 1; Code 1933, 41A-1501, enacted by Ga. L. 1974, p. 705, 1.)

7-1-331. Organization; approval by department.

Any one or more trust institutions may cause a fiduciary investment company or companies to be organized and incorporated, but no trust institution or foreign trust institution may own an interest in more than seven fiduciary investment companies. A fiduciary investment company shall not begin business, except to select an investment adviser, until it is approved by the department.

(Ga. L. 1970, p. 515, 2; Ga. L. 1971, p. 639, 3; Code 1933, 41A-1502, enacted by Ga. L. 1974, p. 705, 1.)

7-1-332. Incorporation.

Any such fiduciary investment company shall be incorporated under and subject to [Chapter 2 of Title 14](#). The incorporators shall be persons who are officers or directors of the trust institution or institutions causing such fiduciary investment company to be incorporated; and the articles of incorporation shall set forth the name of each trust institution participating in such incorporation and the amount of stock originally subscribed for by each, together with such other facts as are required by [Chapter 2 of Title 14](#).

(Ga. L. 1970, p. 515, 3; Code 1933, 41A-1503, enacted by Ga. L. 1974, p. 705, 1.)

7-1-333. Limitations on investments.

Trust institutions and foreign trust institutions, as defined by this part, acting in a fiduciary capacity and for fiduciary purposes, if exercising due care as a prudent investor, and with the consent of any cofiduciary, may invest and reinvest funds held in such fiduciary capacity in the shares of stock of one or more fiduciary investment companies, except where the will, trust indenture, or other instrument under which such trust institution or foreign trust institution acts prohibits such investment, provided that the fiduciary investment company, by its articles of incorporation issued and granted in conformity with [Chapter 2 of Title 14](#), shall have and possess the corporate powers required by this part and be subject to the limitations set forth by this part; provided, further, that no such trust institution or foreign trust institution shall invest in the stock of a fiduciary investment company on behalf of any estate, trust, or fund administered by such trust institution or foreign trust institution a sum or amount which would result in such estate, trust, or fund having a total investment in such stock in excess of the maximum amount or percentage that might be invested by such estate, trust, or fund, under the regulations of the department in effect at the time of such investment, in any common trust fund having total assets equal to the total assets of the fiduciary investment company as increased by the proposed investment; and no trust institution or foreign trust institution shall invest in the stock of a fiduciary investment company if, immediately after such investment and as a consequence thereof, it would own more than 25 percent of the voting securities of such fiduciary investment company which would then be outstanding.

(Ga. L. 1970, p. 515, 4; Ga. L. 1971, p. 639, 4; Ga. L. 1973, p. 549, 2; Code 1933, 41A-1504, enacted by Ga. L. 1974, p. 705, 1.)

7-1-334. Corporate powers; limitations and restrictions.

Every fiduciary investment company in which a trust institution or foreign trust institution is authorized by this part to own and hold corporate stock or shares, in order to qualify for such investments, shall have such corporate powers as may be granted by [Chapter 2](#) of [Title 14](#) by virtue of its incorporation under those chapters and shall, in addition, have the following corporate powers under its articles of incorporation and, by its articles of incorporation or its bylaws, be subject to the limitations and restrictions set forth in this Code section:

(1) The stock of any such fiduciary investment company shall be owned and held only by trust institutions and foreign trust institutions acting as fiduciaries or cofiduciaries but may be registered in the name of the nominee or nominees of any such trust institution or foreign trust institution. Such stock shall not be subject to transfer or assignment except to the trust institution or foreign trust institution on whose behalf the stock is held by any such nominee or nominees or to a fiduciary or cofiduciary which becomes successor to the shareholder and which is also a trust institution or foreign trust institution qualified to hold such stock.

(2) A fiduciary investment company shall have no less than five directors, who need not be shareholders but shall be officers or directors of trust institutions or foreign trust institutions holding stock in such fiduciary investment company; provided, however, that no more than two directors shall be officers or directors of any one trust institution or foreign trust institution if the fiduciary investment company has been organized and incorporated by three or more trust institutions.

(3) In acquiring, investing, reinvesting, exchanging, selling, and managing its assets, every fiduciary investment company shall exercise the judgment and care under the circumstances then existing which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the safety of their capital. Within the foregoing limitations, a fiduciary investment company may acquire and retain every kind of investment, specifically including (but not by way of limitation) bonds, debentures, and other corporate obligations and corporate stocks, preferred or common, which men of prudence, discretion, and intelligence acquire or retain for their own account, provided that a fiduciary investment company shall not at any time:

(A) Invest in real estate, commodities, or commodity contracts;

(B) Participate on a joint or joint and several basis in any securities trading account;

(C) Invest in companies for the purpose of exercising control or management;

(D) Make loans to any person or persons, except that the purchase of a portion of an issue of debt securities, convertible debt securities, debt securities with warrants, rights, or options attached, or other similar securities when originally issued or thereafter, of a character commonly distributed publicly, shall not be considered the making of a loan;

(E) Purchase or retain the securities of any issuer if immediately after such acquisition and as a result thereof the following requirements would not be met: at least 75 percent of the total assets in the fiduciary investment company taken at market value are represented by cash and cash items, securities issued or guaranteed by the United States or an instrumentality thereof, and other securities which, as to any one issuer, do not represent more than 10 percent of the value of the total assets of the fiduciary investment company;

(F) Purchase or otherwise acquire the securities of any other investment company as that term is defined in the act of Congress entitled "Investment Company Act of 1940";

(G) Act as underwriter of the securities of other issuers;

(H) Borrow money; or

(I) Engage in margin transactions or short sales or write put or call options for the purchase or sale of securities.

(4) A fiduciary investment company may acquire, purchase, or redeem its own stock and may, by means of contract or by its bylaws, bind itself to acquire, purchase, or redeem its own stock; but it shall not vote shares of its own stock theretofore redeemed.

(5) A fiduciary investment company shall not be responsible for ascertaining the investment powers of any fiduciary who may purchase its stock, shall not be liable for accepting funds from a fiduciary in violation of restrictions of the will, trust indenture, or other instrument under which such fiduciary is acting in absence of actual knowledge of such violation, and shall be accountable only to the department and the fiduciaries who are the owners of its stock.

(6) Every fiduciary investment company subject to the supervision and regulation of the comptroller of the currency of the United States shall comply with all applicable rules and regulations of that agency to the extent that such rules and regulations are in addition to or in conflict with rules and regulations promulgated by the department.

(Ga. L. 1970, p. 515, 5; Ga. L. 1971, p. 639, 5; Ga. L. 1973, p. 549, 3, 4; Ga. L. 1974, p. 598, 1, 2; Code 1933, 41A-1505, enacted by Ga. L. 1974, p. 705, 1.)

7-1-335. Rules and regulations; examinations.

Without limitation on the authority conferred by Article 1 of this chapter, the department shall have authority to adopt and issue reasonable and uniform rules and regulations to govern the conduct and management of all fiduciary investment companies. The department shall not examine fiduciary investment companies subject to regular examination by the comptroller of the currency of the United States or the Board of Governors of the Federal Reserve System but shall otherwise have full power to examine fiduciary investment companies and enforce laws concerning them as though they were financial institutions.

(Ga. L. 1970, p. 515, 6; Ga. L. 1973, p. 549, 5; Code 1933, 41A-1506, enacted by Ga. L. 1974, p. 705, 1.)

7-1-336. Advertisement of participation; financial reports.

Except as may be specifically authorized by rule or regulation of the department, no trust institution or foreign trust institution holding stock in a fiduciary investment company may advertise or publicize its participation in such fiduciary investment company, provided that any trust institution or foreign trust institution holding stock in a fiduciary investment company shall furnish the annual or periodic financial reports of such fiduciary investment company, on request, to any person having a beneficial interest therein and the fact of the availability of such material may be given publicity in connection with the promotion of the fiduciary services of such trust institution or foreign trust institution.

(Ga. L. 1970, p. 515, 7; Ga. L. 1971, p. 639, 6; Code 1933, 41A-1507, enacted by Ga. L. 1974, p. 705, 1.)

7-1-337. Investment advisers.

No person shall serve or act as investment adviser of a fiduciary investment company except pursuant to a written contract which has been approved by the vote of a majority of the outstanding voting securities of such fiduciary investment company and which:

(1) Precisely describes all compensation to be paid thereunder;

(2) Shall continue in effect for a period more than two years from the date of its execution only so long as such continuance is specifically approved at least annually by the board of directors or by vote of a majority of the outstanding voting securities of such company;

(3) Provides, in substance, that it may be terminated at any time, without the payment of any penalty, by the board of directors of such company or by vote of a majority of the outstanding voting securities of such company on not more than 60 days' written notice to the investment adviser; and

(4) Provides, in substance, for its automatic termination in the event of its assignment by the investment adviser.

(Ga. L. 1970, p. 515, 8; Code 1933, 41A-1508, enacted by Ga. L. 1974, p. 705, 1.)

7-1-338. Prohibition on refusing participation.

No fiduciary investment company shall refuse participation to any trust institution or foreign trust institution, as defined in this part, which is otherwise qualified to engage in a fiduciary investment program.

(Ga. L. 1970, p. 515, 9; Ga. L. 1971, p. 639, 7; Code 1933, 41A-1509, enacted by Ga. L. 1974, p. 705, 1.)

PART 6

DEPOSITS, SAFE-DEPOSIT AGREEMENTS, AND MONEY RECEIVED FOR TRANSMISSION

7-1-350. Notice of rules governing deposits.

A bank which has adopted rules governing deposits or withdrawal of deposits shall give notice of the rules and all changes therein to each customer whose deposits are affected by such rules, either by delivery of a copy to such customer or by posting them in a conspicuous area in the main office and in all branch offices of the bank. If such rules are stated on a signature card or other contract signed by the customer, the bank shall be deemed to have given notice of the rules for purposes of this provision even if such signature card or contract is returned to the bank.

(Ga. L. 1919, p. 135, art. 19, 47; Code 1933, 13-2047; Code 1933, 41A-1601, enacted by Ga. L. 1974, p. 705, 1.)

7-1-351. Minors' deposits and safe-deposit agreements.

(a) A bank may receive deposits from:

(1) A minor; or

(2) A minor with one or more adults or other minors, as party to and with the same effect as a multiple-party account under Article 8 of this chapter.

(b) A bank or trust company may rent a safe-deposit box or other receptacle for safe deposit of property to, and receive property for safe deposit from, a minor, individually or jointly with one or more adults or other minors.

(c) A bank or trust company may deal with a minor with respect to a deposit account or safe-deposit agreement covered by subsection (a) or (b) of this Code section without the consent of a parent or guardian and with the same effect as though the minor were an adult. A parent or guardian shall not have any right in that capacity to interfere with any such transaction. Any

action of the minor with respect to such deposit account or safe-deposit agreement shall be binding on the minor with the same effect as though the minor were an adult.

(Ga. L. 1919, p. 135, art. 19, 41; Code 1933, 13-2041; Code 1933, 41A-1602, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1977, p. 730, 4.)

7-1-352. Deposit by agent, trustee, or other fiduciary.

(a) Whenever any agent, administrator, executor, guardian, trustee, either express or implied, or other fiduciary, whether bona fide or mala fide, shall deposit any money in any bank to his credit as an individual, or as such agent, trustee, or other fiduciary, whether the name of the person or corporation for whom he is acting or purporting to act be given or not, such bank shall be authorized to pay the amount of such deposit, or any part thereof, upon the order of such agent, administrator, executor, guardian, trustee, or other fiduciary, signed with the name in which such deposit was entered, without being accountable in any way to the principal, cestui que trust, or other person or corporation who may be entitled to or interested in the amount so deposited.

(b) Nothing contained in this Code section shall prevent the person or corporation claiming the beneficial interest in or to any deposit in any bank from resorting to the courts to claim such deposit, provided such action is brought and served before such deposit is paid out and in accordance with the requirements of Code [Section 7-1-353](#).

(Ga. L. 1919, p. 135, art. 19, 42; Code 1933, 13-2042; Code 1933, 41A-1605, enacted by Ga. L. 1974, p. 705, 1.)

7-1-353. Adverse claims to deposits and property held in safe deposit.

(a) Except as provided in subsections (b) and (c) of this Code section, a bank or trust company shall not be required to deny control over or access to a deposit account or property held in safe deposit (whether by the bank or trust company or in a safe-deposit box or other receptacle leased to a customer) to:

(1) The customer in whose name the account or property is held by the bank or trust company (including one of two depositors or lessees entitled to such control or access by virtue of their contract with the bank or trust company); or

(2) A person or group of persons who is authorized to draw on or control the account or property pursuant to a certified corporate resolution or other written arrangement with the customer currently on file with the bank or trust company.

(b) A bank shall be entitled to act and rely upon:

(1) A court order, distraint, levy, or other effective legal process;

(2) An agreement of the parties concerning an adverse claim; or

(3) A claim of the type described in subsection (a) of this Code section accompanied by a bond or other indemnity adequate to protect the bank or trust company from loss as a consequence of recognizing an adverse claim.

(c) Nothing in this Code section shall impair the effect of a discharge which a bank or trust company would be entitled to under Code [Section 11-3-602](#).

(Code 1933, 41A-1606, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1984, p. 22, 7; Ga. L. 1997, p. 143, 7.)

7-1-354. Money received for transmission.

(a) A bank or trust company which receives money for transmission shall give the customer a receipt setting forth:

(1) The date of receipt of the money;

(2) The amount of the money in dollars and cents; and

(3) If the money is to be transmitted to a foreign country in the currency of such country, the amount of the money in such currency.

(b) In an action by a customer against a bank or trust company for recovery of money delivered for transmission, the burden of proof of delivery of the money in accordance with the instructions of the customer shall be on the bank or trust company; but an affidavit by an agent or correspondent of the bank or trust company that the money was delivered in accordance with the customer's instructions shall be prima-facie evidence of the delivery of the money in accordance with the customer's instructions.

(Code 1933, 41A-1607, enacted by Ga. L. 1974, p. 705, 1.)

7-1-355. Agreements concerning safe deposits.

A bank, trust company, building and loan association, or savings and loan association may receive property for safe deposit and rent out receptacles and safe deposit boxes on the terms and conditions prescribed by it; but such terms and conditions shall not bind any customer to whom the bank, trust company, building and loan association, or savings and loan association does not give notice thereof either by delivery of a copy or by posting in its offices where such receptacles or safe-deposit boxes are located, or who does not otherwise agree to such terms and conditions.

(Code 1933, 41A-1608, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1978, p. 1717, 4.)

7-1-356. Procedures on death or incompetence of safe depositor.

(a) Any financial institution contracting with a person for the use of a safe-deposit box or receiving property from a person for safekeeping, upon presentation of satisfactory proof of the death or legal incompetence of such person, shall permit any person named in an order granted by the probate court having jurisdiction of such person's estate to open and examine the contents of any safe-deposit box leased by the decedent or legally incompetent person or to examine the property left by such person for safekeeping, in the presence of an officer of the financial institution. The financial institution, if so requested by such person, shall deliver:

(1) Any writing purporting to be a will of the decedent to the probate court having jurisdiction of the decedent's estate;

(2) Any writing purporting to be a deed to a burial plot or to give burial instructions to the person named in such order;

(3) Any document purporting to be an insurance policy on the life of the decedent to the beneficiary named therein;

but no other contents shall be removed pursuant to this Code section.

(b) Within five banking days after the order of the court is presented to the financial institution, the financial institution shall permit the person named in such order to inventory the contents of any safe-deposit box leased or rented to the decedent or legally incompetent person or the property left by such person for safekeeping. The inventory shall be conducted in the presence of an officer or employee of the financial institution by the person named in such order. The inventory shall be signed by such persons, and a copy thereof shall be retained by the financial institution and may be filed with the probate court.

(c) The financial institution shall be free from all liability with respect to any action, claim, or demand of whatever nature asserted by any heir, legatee, distributee, creditor, administrator, executor, guardian, trustee, or other fiduciary or by any person whomsoever when acting pursuant to such letters of authority.

(d) Upon presentation of a certified copy of his letters of authority, the financial institution shall grant the personal representative access to any safe-deposit box or property in safekeeping in the sole name of a decedent or legally incompetent person to permit him to remove from such box or place of safekeeping any part or all of the property therein without liability.

(Ga. L. 1972, p. 437, 1-4; Code 1933, 41A-1609, enacted by Ga. L. 1974, p. 705, 1.)

7-1-357. Payment of deposit of deceased depositor; deposit by nursing home of moneys left in its possession upon death of resident.

Reserved. Repealed by Ga. L. 1983, p. 661, 2, effective July 1, 1983.

7-1-358. Dormant accounts.

In accordance with and subject to the limitation of such regulations as the department may prescribe, a bank may, from time to time, charge a dormant account a reasonable service charge.

(Code 1933, 13-2067, enacted by Ga. L. 1966, p. 590, 10; Code 1933, 41A-1611, enacted by Ga. L. 1974, p. 705, 1.)

7-1-359. Fee prohibited for conducting search of dormant, abandoned, or unclaimed deposit accounts; commission or finder's fee allowed.

No person shall charge a fee or solicit any other form of compensation for the purpose of conducting a search for dormant, abandoned, or unclaimed deposit accounts or other abandoned properties whether held by a financial institution or escheated to any governmental agency. Notwithstanding the foregoing, a commission or finder's fee not to exceed 10 percent of actual sums recovered by the owner of such accounts may be agreed to by the parties. All moneys and properties located by a person to be compensated by the payment of such a commission or finder's fee shall be paid directly to the owner and may not be paid over to the person to receive the commission or finder's fee whether pursuant to a duly executed power of attorney or otherwise.

(Code 1981, 7-1-359, enacted by Ga. L. 1989, p. 1211, 6.)

7-1-360. Third-party claims; notification of disclosure by third party to depositor; motion to quash disclosure.

(a) No financial institution shall be required to recognize the claim of any third party to any deposit, or withhold payment of any deposit to the depositor or to his order, unless and until the financial institution is served with citation, order, or other appropriate process issuing out of a court of competent jurisdiction in connection with a suit instituted by such third party for the purpose of recovering or establishing an interest in such deposit. Neither shall any financial institution be required to disclose or produce to third parties, or permit third parties to examine any records pertaining to a deposit account, loan account, or other banking relationship except:

(1) Where the financial institution itself is a proper or necessary party to a proceeding in a court of competent jurisdiction;

(2) Where the records of accounts or other customer records are requested through subpoena or other administrative process issued by a state, federal, or local administrative agency having competent jurisdiction over the depositor or other customer or where such records are requested pursuant to Georgia or federal law governing civil practice or procedure in conjunction with an ongoing civil action in a Georgia state or federal court of competent jurisdiction;

(3) Where the records of accounts or other customer records are requested in conjunction with an ongoing criminal or tax investigation of the depositor or other customer by a state or federal grand jury, taxing authority, or law enforcement agency; or

(4) Where the records of accounts or other customer records are requested by any state or federal regulatory agency having jurisdiction over the financial institution.

(b) Unless directed otherwise by a court of competent jurisdiction, before disclosure, production, or examination of records produced under paragraph (1) or (2) of subsection (a) of

this Code section, the agency or other party seeking the disclosure or production of the records shall provide notification to the depositor or other customer of such request. Notification of the depositor or other customer under circumstances set forth in paragraphs (3) and (4) of subsection (a) of this Code section shall not be made without the consent of the requesting authority. For purposes of ascertaining whether or not proper notice has been given or whether or not the depositor or other customer may be notified, the financial institution may rely upon appropriate certification or written assurances from the requesting party and in doing so shall be relieved of any liability which might be asserted in connection with such disclosures.

(c) Each customer or depositor to whom notice of an order, subpoena, or request for disclosure, examination, or production of records was lawfully given may, prior to the date specified therein for disclosure, examination, or production, file in the court issuing an order or subpoena for the records or in the Georgia or federal court where the civil matter is being heard or, in the absence of such a court, in the superior court of the county in which the financial institution is located a motion to quash the order, subpoena, or request or for a protective order and shall serve such motion on the party requesting disclosure and the financial institution as may be otherwise provided by law for similar motions. Failure to file and serve such motion to quash or for protection shall constitute consent for all purposes to disclosure, production, or examination made pursuant to this Code section.

(Code 1981, 7-1-360, enacted by Ga. L. 1989, p. 1211, 6; Ga. L. 2005, p. 826, 8/SB 82.)

PART 7

BANKING DEPOSITORIES, RESERVES, AND REMISSIONS

7-1-370. Deposits by banks.

(a) Subject to the restrictions of subsection (b) of this Code section and of Code [Section 7-1-371](#) in regard to reserve funds, a bank may deposit its funds in any depository which is:

- (1) Selected by, or in any manner authorized by, its directors;
- (2) Authorized by law to receive deposits; and

(3) In the case of a depository located in the United States, one which has deposit insurance issued by or equivalent to deposit insurance provided by a federal public body to depositories of the type involved.

(b) If a director of the bank has a relationship to a depository as either:

- (1) An officer or director; or
- (2) An owner of 5 percent or more of the shares of the depository,

the depository shall be approved by a majority of the directors other than the director who has such relationship.

(Code 1933, 41A-1701, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1981, p. 1366, 10; Ga. L. 1997, p. 485, 14.)

7-1-371. Legal reserve requirements; notice of deficiency; penalty; effect of deficiency.

(a) For the purposes of the reserve requirement imposed by subsection (b) of this Code section and the composition of the required reserve fund under subsection (d) of this Code section, the term:

(1) "Demand deposits" means the aggregate of deposits which can be required to be paid on demand or within less than 30 days after demand;

(2) "Reserve agent" means a depository of a bank selected as provided in Code [Section 7-1-370](#) and approved by the department for the deposit of funds included in the required reserve fund.

(b) A bank which is not a member of the Federal Reserve System shall maintain at all times a reserve fund in an amount fixed by regulation of the department; but in no case shall such reserve be required in excess of:

(1) In the case of a savings bank, 5 percent of total deposits; and

(2) In the case of a commercial bank, the aggregate of 15 percent of demand deposits and 5 percent of other deposits.

The amount of the required reserve for each day shall be computed on the basis of average daily deposits covering such biweekly or shorter periods as shall be fixed by regulation of the department.

(c) A bank which is a member of the Federal Reserve System shall maintain at all times a reserve fund in accordance with the requirements applicable to a member bank under the laws of the United States.

(d) In the case of a commercial bank, such portion of the reserve fund against deposits as shall be fixed by regulation of the department shall consist of United States coin and currency on hand or on deposit, subject to call without notice, in a reserve agent. The balance of such reserve fund shall be kept in obligations of:

(1) The United States, the Federal National Mortgage Association, a federal land bank, a federal home loan bank, a bank for cooperatives, a federal intermediate credit bank, or the State of Georgia; or

(2) Other issuers whose obligations are marketable and approved by regulation of the department for the purpose of this Code section.

(e) In the case of a savings bank, the reserve fund shall consist of:

(1) United States coin and currency on hand or on deposit, subject to call without notice, in a reserve agent, in a total amount not less than 1 percent of the deposits of the savings bank; and

(2) Securities permitted under subsection (d) of this Code section.

(f) All assets which are part of the reserve fund shall be owned absolutely by the bank and shall not be pledged, assigned, or hypothecated in any manner or subject to setoff. The value of all securities which constitute a part of a bank's reserve fund shall be computed at the current market value thereof.

(g) A bank shall give written notice to the department, in the manner prescribed by the department for such notice, of any deficiency in the amount or form of the reserve fund required by this Code section within three business days after the close of any scheduled averaging period during which such deficiency occurs. A bank shall pay to the department a penalty of \$50.00 for each day after the time fixed for the giving of notice in which it fails to give such notice, provided that the department may relieve a bank of this penalty for good cause shown.

(h) Immediately following the closing of any scheduled averaging period during which a deficiency in the required reserve occurs, the bank will take immediate action to restore the deficiency; and, until such deficiency is restored, the bank shall not make any new loans or discounts other than by discounting or purchasing bills of exchange at sight; nor shall any dividend be declared out of the profits of such bank. Any bank failing to restore its reserve to the required amount within 30 days after the closing of the averaging period in which the deficiency occurs may have its business and assets taken over by the department as provided in Part 7 of Article 1 of this chapter.

(Ga. L. 1919, p. 135, art. 19, 27, 28; Ga. L. 1920, p. 102, 1; Code 1933, 13-2027, 13-2028; Ga. L. 1939, p. 360, 1, 2; Ga. L. 1966, p. 692, 50; Ga. L. 1967, p. 798, 1, 2; Ga. L. 1969, p. 126, 1; Ga. L. 1973, p. 526, 6, 7; Code 1933, 41A-1702, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1975, p. 445, 22.)

7-1-372. Remission of checks at par; collection charge; service charge.

A commercial bank shall pay all checks drawn on it at par and shall make no charge for the payment of such checks; provided, however, it may deduct a reasonable collection charge covering its actual expenses from the remittance for any check forwarded to it for collection and remittance as a special collection item and may impose a service charge as authorized by Code [Section 44-12-196](#), relating to when an instrument on which a banking or financial organization is directly liable is presumed abandoned.

(Ga. L. 1919, p. 135, art. 19, 27, 28; Ga. L. 1920, p. 102, 1; Code 1933, 13-2027, 13-2028; Ga. L. 1939, p. 360, 1, 2; Ga. L. 1966, p. 692, 50; Ga. L. 1967, p. 798, 1, 2; Ga. L. 1969, p. 126, 1; Ga. L. 1973, p. 526, 6, 7; Code 1933, 41A-1703, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1995, p. 1368, 2.)

PART 8

INCORPORATION OF BANKS AND TRUST COMPANIES

7-1-390. Incorporators.

One or more natural persons 18 years of age or over may act as incorporators of a bank or trust company.

(Ga. L. 1898, p. 78, 1; Civil Code 1910, 2815; Ga. L. 1919, p. 135, art. 8, 1; Ga. L. 1920, p. 102, 1; Ga. L. 1927, p. 195, 7; Ga. L. 1931, p. 156, 1; Code 1933, 13-901, 109-101; Ga. L. 1935, p. 101, 1; Ga. L. 1941, p. 312, 1; Ga. L. 1943, p. 249, 1; Ga. L. 1965, p. 501, 1; Ga. L. 1966, p. 463, 1; Ga. L. 1966, p. 692, 7; Ga. L. 1972, p. 384, 1; Ga. L. 1972, p. 727, 1; Code 1933, 41A-1801, enacted by Ga. L. 1974, p. 705, 1.)

7-1-390.1. Organization of bank or trust company as limited liability company; promulgation of rules and regulations governing.

(a) Subject to the requirements and restrictions of this chapter including, but not limited to, deposit insurance requirements where applicable, a bank or trust company may organize as a limited liability company pursuant to [Chapter 11 of Title 14](#).

(b) The department shall have the authority to promulgate rules and regulations in accordance with Code [Section 7-1-3](#) specifying the conditions under which a bank or trust company may organize as a limited liability company.

(c) To the extent the provisions of [Chapter 11 of Title 14](#) are consistent with and not in conflict with the provisions of this chapter and the rules and regulations of the department, such provisions shall apply to a bank or trust company that has organized as a limited liability company.

(Code 1981, 7-1-390.1, enacted by Ga. L. 2003, p. 843, 4.)

7-1-391. Prohibition of promoters' fees.

(a) A bank or trust company shall not pay any fee, compensation, or commission for promotion in connection with its organization or apply any money received on account of shares or subscriptions, selling shares, or other services in connection with its organization, except legal fees, commissions or fees to disinterested third parties for sale of bank stock to others, and other usual and ordinary expenses necessary for its organization.

(b) A majority of incorporators shall file with the department at the time of filing of the articles an affidavit:

(1) Setting forth all expenses incurred or to be incurred in connection with the organization of the bank or trust company, subscription for its shares, and sale of its shares; and

(2) Stating that no fee, compensation, or commission prohibited by subsection (a) of this Code section has been paid or incurred.

(c) In the event of a violation of this Code section the department may disapprove the articles on account of such violation.

(Code 1933, 41A-1802, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1999, p. 674, 7.)

7-1-392. Articles of incorporation; advertisement of articles or notice of application; naming registered agent.

(a) The articles of incorporation shall be signed by each of the incorporators and shall set forth in the English language:

(1) The name of the bank or trust company;

(2) The street address and county where the main office will be located;

(3) For institutions chartered after July 1, 1998, the name of the initial registered agent;

(4) The street address where its initial registered office will be located;

(5) A brief statement of the purpose or purposes for which it is incorporated, that it is incorporated under this chapter, and whether it shall be solely a bank, solely a trust company, or both a bank and trust company;

(6) The term for which it is to exist, which shall be perpetual unless otherwise limited;

(7) The aggregate number of shares which the bank or trust company shall have authority to issue, and:

(A) If the shares are to consist of one class only, the par value of each of the shares; or

(B) If the shares are to be divided into classes, the number of shares of each class, the par value of each share of each class, a description of each class, and a statement of the preferences, redemption provisions, qualifications, limitations, restrictions, and the special or relative rights granted to or imposed upon the shares of each class;

(8) The name, place of residence, and post office address of each incorporator;

(9) The name, occupation, citizenship, place of residence, and post office address of each of the first directors, which number shall not be less than five; and

(10) Any provision not inconsistent with law which the incorporators may choose to insert for the regulation of the internal affairs and business of the bank or trust company.

(b) It shall not be necessary to set forth in the articles any of the corporate or operational powers set forth in this chapter.

(c) The incorporators shall file with the department, in triplicate, the articles, together with the fee required by Code [Section 7-1-862](#). Such filing shall constitute an application for a certificate of incorporation. Immediately upon the filing of the articles, the department shall certify one copy thereof and return it to the applicants, who shall, in conformity with Code [Section 7-1-7](#) and on the next business day following the filing of the articles, transmit for publication a copy of the articles or, in lieu thereof, a statement in substantially the following form:

application for a certificate of incorporation of a (bank, trust company, or bank and trust company) to be known as the _____ and to be located at _____ in _____ County, Georgia, will be made to the Secretary of State of Georgia by (names and addresses of incorporators) in accordance with [Chapter 1](#) of [Title 7](#) of the Official Code of Georgia Annotated, known as the 'Financial Institutions Code of Georgia.' A copy of the articles of incorporation of said proposed (bank, trust company, or bank and trust company) and the application have been filed with the Department of Banking and Finance. The following persons have been proposed as the initial directors: (names and addresses of proposed directors)."

to the newspaper which is the official organ of the county where the main office will be located. The articles or the statement must be published once a week for two consecutive weeks with the first publication occurring within ten days of receipt by the newspaper of the articles or statement.

(d) A registered agent shall be named for each financial institution that is a corporation, and each financial institution shall inform the department and the Secretary of State of its current registered agent.

(Ga. L. 1898, p. 78, 1, 2; Civil Code 1910, 2815, 2816; Ga. L. 1919, p. 135, art. 8, 1-3; Ga. L. 1920, p. 102, 1; Ga. L. 1927, p. 195, 7; Ga. L. 1931, p. 156, 1; Code 1933, 13-901, 13-902, 13-

903, 109-101, 109-102; Ga. L. 1935, p. 101, 1; Ga. L. 1941, p. 312, 1; Ga. L. 1943, p. 249, 1; Ga. L. 1952, p. 193, 1; Ga. L. 1965, p. 501, 1; Ga. L. 1966, p. 463, 1; Ga. L. 1966, p. 692, 7-9; Ga. L. 1972, p. 384, 1; Ga. L. 1972, p. 727, 1; Code 1933, 41A-1803, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1989, p. 1257, 5; Ga. L. 1998, p. 795, 15.)

7-1-393. Additional filings with department; fees.

The incorporators shall also file with the department:

(1) Information desired by the department in order to evaluate the proposed institution which shall be made available in the form specified by the department;

(2) The affidavit required by Code [Section 7-1-391](#);

(3) A certificate of the Secretary of State showing that the proposed name of the bank or trust company has been reserved pursuant to Code [Section 7-1-131](#); and

(4) Applicable fees established by regulation of the department to defray the expense of the investigation required by Code [Section 7-1-394](#).

(Ga. L. 1919, p. 135, art. 8, 4; Code 1933, 13-904; Ga. L. 1955, p. 201, 1; Ga. L. 1964, p. 689, 1; Ga. L. 1966, p. 692, 10; Ga. L. 1972, p. 727, 2; Code 1933, 41A-1804, enacted by Ga. L. 1974, p. 705, 1.)

7-1-394. Investigation; approval or disapproval by department; abbreviated procedures.

(a) Upon receipt of the articles and the filings and fees from the incorporators as required by Code [Section 7-1-393](#), the department shall conduct such investigation as it may deem necessary to ascertain whether it should approve the proposed bank or trust company. The department shall approve the bank or trust company if and only if it determines in its discretion that:

(1) The articles and supporting items satisfy the requirements of this chapter;

(2) The convenience and needs of the public will be served by the proposed bank or trust company;

(3) There is a reasonable promise of adequate support for the bank or trust company in the light of:

(A) The competition offered by existing banks and trust companies and other financial institutions;

(B) The previous financial history of the community as to banks, trust companies, and other financial institutions;

(C) As to banks, the opportunities for profitable employment of bank funds as indicated by the average demand for credit, the number of potential depositors, the volume of bank transactions, and the businesses and industries of the community with particular regard to their stability, diversification, and size; and

(D) As to trust companies, the opportunities for profitable employment of fiduciary or other representative services;

(4) The character and fitness of the incorporators, of the directors, and of the proposed officers are such as to command the confidence of the community and to warrant the belief that the business of the proposed bank or trust company will be honestly and efficiently conducted;

(5) There has not been any material violation of Code [Section 7-1-391](#), so that approving the articles would, in the opinion of the department, impair the policy manifested by that provision;

(6) The capital structure of the proposed bank or trust company is adequate in relation to the amount and character of the anticipated business of the bank or trust company and the safety of prospective depositors; and

(7) In the case of trust companies, the proposed company will have sufficient personnel with adequate knowledge and experience to administer fiduciary accounts.

(b) Within 90 days after receipt of the articles and the filings and fees from the incorporators as required by Code [Section 7-1-393](#), the department shall approve or disapprove the proposed bank or trust company. In giving approval, the department may impose conditions to be satisfied prior to the issuance of a permit to do business under Code [Section 7-1-396](#). If the department, in its discretion, shall approve the proposed bank or trust company with or without conditions, it shall deliver its written approval of the articles to the Secretary of State and notify the incorporators of its action, provided that if the approval of a federal public body is also required with respect to the bank or trust company, then the department may, at its option, withhold its written approval from the Secretary of State until such approval is given and may, at its option, withdraw its approval if the federal public body refuses to grant its approval to the bank or trust company. If the department, in its discretion, shall disapprove the proposed bank or trust company, it shall notify the incorporators of its disapproval and state generally the unfavorable factors influencing its decision. The decision of the department shall be conclusive, except that it may be subject to judicial review as provided in Code [Section 7-1-90](#).

(b.1) The procedure and criteria used in the review of a request to establish an additional banking location pursuant to Code [Sections 7-1-601](#) and [7-1-602](#) may be streamlined and abbreviated as provided by departmental rule, regulation, or written policy.

(c) Nothing contained in this Code section, Code [Section 7-1-608](#), or Code [Section 7-1-622](#) shall limit the authority of the department to approve the organization of a special purpose bank or trust company which does not do a general banking business with the public but is organized for the purpose of conducting a limited banking business which facilitates the

economic, commercial, or export-import trade growth of this state. The department may establish, by rule or by condition to its approval of articles of incorporation of any special bank or of any credit card bank incorporated under the provisions of Chapter 5 of this title, such special provisions concerning distribution of ownership, composition of the board of directors, bylaws, or the conduct of corporate affairs for any such special purpose bank or credit card bank incorporated under the provisions of Chapter 5 of this title as it determines to be consistent with the special nature of such charters and their efficient operation and safe and sound banking practice; provided, however, in no event shall fewer than a majority of the directors of such special purpose bank or credit card bank be residents of this state.

(d) The department shall not approve articles for any trust company that is not also a bank or an affiliated trust company as defined in Code [Section 7-1-320](#).

(e) The department may utilize in its investigation process such reports from other bank supervisory agencies as are pertinent to the requirements of Georgia law.

(Ga. L. 1925, p. 119, 1; Code 1933, 13-905; Ga. L. 1949, p. 308, 1; Ga. L. 1951, p. 287, 1; Ga. L. 1966, p. 692, 11; Code 1933, 41A-1805, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1983, p. 602, 11; Ga. L. 1989, p. 1211, 7; Ga. L. 1989, p. 1257, 6; Ga. L. 1990, p. 8, 7; Ga. L. 1993, p. 511, 1; Ga. L. 1996, p. 848, 6; Ga. L. 1998, p. 795, 16.)

7-1-395. Issuance of certificate of incorporation.

If the Secretary of State shall receive, with respect to the proposed bank or trust company:

(1) The written approval of the department with a copy of the articles of incorporation attached;

(2) An affidavit executed by the duly authorized agent or publisher of the newspaper in which publication of the articles or a summary statement relating thereto is required by Code [Sections 7-1-7](#) and [7-1-392](#) stating that the articles or the summary statement have been published as required by those Code sections;

(3) All fees and charges required by law and if, in addition, the name of the proposed bank or trust company continues to be reserved or is available,

the Secretary of State shall immediately issue to the incorporators a certificate of incorporation. The Secretary of State shall retain on file in his office a copy of the certificate, the articles, the department's approval, and the publisher's certificate.

(Ga. L. 1898, p. 78, 2; Civil Code 1910, 2816; Ga. L. 1919, p. 135, art. 8, 6, 7; Code 1933, 13-906, 13-907, 109-102; Ga. L. 1952, p. 193, 1; Ga. L. 1966, p. 692, 12, 13; Code 1933, 41A-1806, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1989, p. 1257, 7.)

7-1-396. Effect of certificate of incorporation; permit to begin business.

(a) As of the issuance of the certificate of incorporation by the Secretary of State, the corporate existence of the bank or trust company shall begin and those persons who subscribed for shares prior to filing of the articles, or their assignees, shall be shareholders in the bank or trust company; provided, nevertheless, that the department shall have full authority to regulate and supervise the activities of promoters, incorporators, initially named directors, subscribers for shares, and all persons soliciting offers to subscribe for shares in any bank in formation under this chapter even though the corporate existence of the bank may not have officially begun and the bank in formation shall be considered a "bank" for those purposes. Persons named in the articles of incorporation and approved by the department as initial directors of the bank in formation shall not be considered "limited salesmen" or "salesmen" within the meaning of paragraphs (18) and (25), respectively, of subsection (a) of Code [Section 10-5-2](#) but rather shall be considered "executive officers" within the meaning of paragraph (13) of subsection (a) of Code [Section 10-5-2](#).

(b) The certificate of incorporation shall be conclusive evidence of the fact that the bank or trust company has been incorporated; but proceedings may be instituted by the state to dissolve, wind up, and terminate a bank or trust company in accordance with Code [Section 7-1-92](#) and other applicable provisions of this chapter.

(c) Until receipt of a permit to begin business issued by the department, a bank or trust company shall not transact any business except such business as is incident to its organization or to the obtaining of subscriptions and payment for its shares and other securities.

(d) The department shall issue to a bank or trust company a permit to begin business when:

(1) Capital stock of the bank or trust company shall have been fully paid in, in cash, and in no event in an amount less than the minimum capital stock for banks or trust companies under Code [Section 7-1-410](#), and, in addition, there shall have been paid in:

(A) Paid-in capital in an amount not less than 20 percent of the capital stock;

(B) An expense fund in an amount fixed by the department which shall not be less than 5 percent of the capital stock; and

(C) The proceeds of subordinated securities, if any, which were considered part of the capital structure of the bank or trust company by the department under Code [Section 7-1-419](#) in giving its approval of the proposed institution;

(2) All of the directors have taken the oath or affirmation required by Code [Section 7-1-484](#);

(3) The bylaws of the bank or trust company have been filed with the department;

(4) The bank or trust company has designated its registered agent and registered office pursuant to Code [Section 7-1-132](#);

(5) The bank or trust company has been organized and is ready to begin the business for which it was incorporated;

(6) All conditions imposed by the department in giving its approval of the proposed bank or trust company under Code [Section 7-1-394](#) have been satisfied; and

(7) The department has received an affidavit signed by the president or secretary and by at least a majority of the directors of the bank or trust company to the effect that all of the foregoing requirements of this subsection have been satisfied.

(Ga. L. 1919, p. 135, art. 8, 7, 8; Code 1933, 13-908, 13-909; Ga. L. 1963, p. 511, 1, 2; Ga. L. 1966, p. 692, 14, 16; Code 1933, 41A-1807, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1975, p. 445, 23; Ga. L. 1977, p. 730, 5; Ga. L. 1987, p. 1586, 6; Ga. L. 1991, p. 94, 7; Ga. L. 1998, p. 795, 17.)

7-1-397. Organizational meetings.

(a) After the issuance of the certificate of incorporation by the Secretary of State, a first meeting of the shareholders may be held within this state at the call of the shareholders who were the incorporators, or a majority of them, for the purpose of adopting bylaws or for such other purposes as shall be stated in the notice of the meeting.

(b) After the issuance of the certificate of incorporation by the Secretary of State, an organizational meeting of the board of directors named in the articles shall be held within this state at the call of a majority of the directors for the purpose of adopting bylaws and of electing officers and for transaction of such other business as may come before the meeting. The directors who call the meeting shall give to each director named in the articles at least three days' written notice of the meeting.

(Code 1933, 41A-1808, enacted by Ga. L. 1974, p. 705, 1.)

7-1-398. Liability for premature business.

Incorporators and other persons who organize a bank or trust company which transacts business before its capital stock, paid-in capital, and expense fund as required by Code [Section 7-1-396](#) have been paid in shall be jointly and severally liable to depositors and other creditors to make good the amounts not paid in by subscribers or otherwise deficient. Such liability shall be deemed as an asset of the bank or trust company and may be enforced by it, its successors or assignees, or by a shareholder suing derivatively, or by a receiver appointed under this chapter.

(Ga. L. 1919, p. 135, art. 18, 6; Code 1933, 13-1906; Code 1933, 41A-1809, enacted by Ga. L. 1974, p. 705, 1.)

PART 9

FINANCIAL STRUCTURE

7-1-410. Minimum capital stock.

(a) Except as provided in subsections (b) and (c) of this Code section, the minimum capital stock of a de novo bank or trust company shall be \$3 million. An established bank or trust company no longer in de novo status shall maintain a minimum capital stock of \$3 million or such greater amount as the department may require based on a proportion of capital to total assets.

(b) A de novo bank or trust company whose main office is located in a county with a population of less than 200,000, according to the last official United States census, shall have a minimum capital stock of \$2 million. An established bank or trust company located in such county shall maintain a minimum capital stock of \$2 million or such greater amount as the department may require based on a proportion of capital to total assets.

(c) A bank or trust company existing on July 1, 1989, with a capital stock of less than that required by subsections (a) and (b) of this Code section shall not be required to increase its capital stock above the amount outstanding on July 1, 1989, except as otherwise provided by law.

(Ga. L. 1898, p. 78, 1; Civil Code 1910, 2815; Ga. L. 1919, p. 135, art. 8, 1; Ga. L. 1920, p. 102, 1; Ga. L. 1927, p. 195, 7; Ga. L. 1931, p. 156, 1; Code 1933, 13-901, 109-101; Ga. L. 1935, p. 101, 1; Ga. L. 1941, p. 312, 1; Ga. L. 1943, p. 249, 1; Ga. L. 1965, p. 501, 1; Ga. L. 1966, p. 463, 1; Ga. L. 1966, p. 692, 7; Ga. L. 1972, p. 384, 1; Ga. L. 1972, p. 727, 1; Code 1933, 41A-1901, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1989, p. 1211, 8; Ga. L. 1998, p. 795, 18; Ga. L. 2003, p. 843, 5.)

7-1-411. Paid-in capital and appropriated retained earnings.

Losses sustained by a bank or trust company in excess of retained earnings may be charged to paid-in capital or to appropriated retained earnings, provided that a bank or trust company shall not pay any dividends so long as its paid-in capital and appropriated retained earnings do not, in combination, equal at least 20 percent of its capital stock. Earnings shall, not later than the end of each fiscal year, be transferred to appropriated retained earnings until such required 20 percent margin is obtained.

(Code 1933, 41A-1902, enacted by Ga. L. 1974, p. 705, 1.)

7-1-412. Beginning business expense fund.

The expense fund required under Code [Section 7-1-396](#) shall be created out of amounts paid for shares of common stock which are in excess of 120 percent of the par value of such shares. Such expense fund may be charged for expenses incurred by the bank or trust company in connection with its incorporation and operation, and any balance in such fund at any time after the expiration of one year from the issuance of a permit to begin business may be credited to paid-in capital.

(Code 1933, 41A-1903, enacted by Ga. L. 1974, p. 705, 1.)

7-1-413. Classes of shares.

A bank or trust company may have one or more classes of common or preferred shares, all of which shall be shares with par value of not less than \$1.00 and any or all of which may, subject to the restrictions of this chapter, consist of shares with full, limited, multiple, fractional, or no voting rights and such designations, preferences, qualifications, privileges, limitations, redemption provisions (in the case of preferred shares), options, conversion rights, and other special rights as shall be stated in the articles. Except as otherwise stated in the articles, this chapter, or other applicable laws, each share shall be equal in all respects to every other share.

(Ga. L. 1919, p. 135, art. 8, 1; Ga. L. 1920, p. 102, 1; Ga. L. 1927, p. 195, 7; Ga. L. 1931, p. 156, 1; Code 1933, 13-901; Ga. L. 1935, p. 101, 1; Ga. L. 1941, p. 312, 1; Ga. L. 1943, p. 249, 1; Ga. L. 1965, p. 501, 1; Code 1933, 13-912, enacted by Ga. L. 1966, p. 590, 3; Ga. L. 1966, p. 692, 7; Ga. L. 1968, p. 1045, 1; Ga. L. 1969, p. 958, 1; Ga. L. 1972, p. 727, 1; Code 1933, 41A-1904, enacted by Ga. L. 1974, p. 705, 1.)

7-1-414. Purchase, redemption, and convertibility of shares and debt securities.

(a) Any preferred shares subject to redemption shall be redeemable only pro rata or by lot or by such other equitable method as is selected by the board of directors, except as otherwise provided in the articles.

(b) With the written approval of the department and the votes of directors and shareholders required to authorize an increase in the capital stock of the institution under Code Section 7-1-511:

- (1) Preferred stock may be convertible to common stock; and
- (2) Subordinated securities may be convertible to common stock.

(c) With the written approval of the department, a resolution of the board of directors, and a two-thirds' affirmative vote of the shares entitled to vote, a bank or trust company may acquire issued shares of its own common stock, which will then be considered treasury shares. The department shall consider whether the acquisition has a legitimate corporate purpose, whether any capital impairment would result, and whether the price of the shares reflects fair market value.

(Code 1933, 13-912, enacted by Ga. L. 1966, p. 590, 3; Ga. L. 1968, p. 1045, 1; Ga. L. 1969, p. 958, 1; Code 1933, 41A-1905, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1999, p. 674, 8.)

7-1-415. Consideration for shares.

(a) Except as provided in subsection (b) of this Code section and in the case of a distribution of shares under subsection (e) of Code [Section 7-1-488](#) or incident to a merger, consolidation, or other corporate reorganization or rehabilitation authorized by this chapter, shares of a bank or trust company may be issued only for cash in an amount which shall be at least the aggregate par value of the share plus such amounts, if any, necessary to assure that after issuance of the shares the bank or trust company will have the paid-in capital required by Code [Section 7-1-411](#) and, in the case of a new bank or trust company, the expense fund required by Code [Section 7-1-396](#).

(b) Where a bank or trust company issues shares in exchange for or in order to convert other shares or obligations which have been issued by it, the consideration for such shares shall be:

(1) The cash originally received for the shares or obligations surrendered or converted;

(2) The additional cash received incident to the exchange or conversion;

(3) The other amounts, if any, transferred to capital stock incident to the exchange or conversion.

In any such case the consideration shall be not less than the minimum amount specified in subsection (a) of this Code section. Any amount by which capital stock may be reduced upon an exchange or conversion shall be transferred to paid-in capital.

(Ga. L. 1898, p. 78, 1; Civil Code 1910, 2815; Ga. L. 1919, p. 135, art. 8, 7; Code 1933, 13-908, 109-101; Ga. L. 1963, p. 511, 1; Code 1933, 13-912, enacted by Ga. L. 1966, p. 590, 3; Ga. L. 1966, p. 692, 14; Ga. L. 1968, p. 1045, 1; Ga. L. 1969, p. 958, 1; Ga. L. 1972, p. 384, 1; Code 1933, 41A-1906, enacted by Ga. L. 1974, p. 705, 1.)

7-1-416. Method of issuance.

(a) Unless more restrictive procedures are stated in the articles, the board of directors may, by resolution duly adopted, issue from time to time, in whole or in part, common or preferred shares authorized by the articles.

(b) With the consent of the department, a bank or trust company may withdraw any offer to sell its common or preferred shares, whether issued pursuant to its articles or pursuant to subsection (a) of this Code section; and such shares may be held as authorized shares subject to future issuance in accordance with subsection (a) of this Code section.

(c) A bank or trust company may not, directly or indirectly, extend credit for the purpose of financing the original purchase of capital stock or capital debt issued by it or by a bank holding company to which it is affiliated.

(Code 1933, 13-912, enacted by Ga. L. 1966, p. 590, 3; Ga. L. 1968, p. 1045, 1; Ga. L. 1969, p. 958, 1; Code 1933, 41A-1907, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1981, p. 1366, 11; Ga. L. 1995, p. 673, 16.)

7-1-417. Share certificates and debt security instruments.

(a) A bank or trust company shall not deliver any share certificate until the share or shares represented thereby are fully paid. Each subscriber, upon payment in full for his shares, shall be entitled to a certificate or certificates certifying the number of shares owned by him in the bank or trust company.

(b) Unless otherwise provided in the articles or the bylaws, the shares of a bank or trust company shall be represented by certificates signed by the president or a vice-president and the secretary or an assistant secretary of the bank or trust company and may be sealed with the seal of the bank or trust company or a facsimile thereof. The signatures of such officers upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent, or registered by a registrar, other than the bank or trust company itself or any employee of the bank or trust company.

(c) Each certificate representing shares shall set forth upon the face thereof:

(1) The name of the bank or trust company;

(2) That the bank or trust company is organized under the laws of this state;

(3) The name or names of the person or persons to whom issued;

(4) The number and class of shares such certificate represents;

(5) The par value of each share represented by such certificate;

(6) If the shares represented thereby are nonvoting shares, a statement or notation to that effect; and

(7) If the shares represented thereby are subordinate to shares of any other class with respect to dividends or amounts payable on liquidation, a brief statement to that effect.

(d) Each certificate representing shares issued by a bank or trust company which is authorized to issue shares of more than one class shall set forth or fairly summarize upon the face or back of the certificate, or shall state that the bank or trust company will furnish to any shareholder upon request and without charge, a full statement of the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued.

(e) In the event of a change in the capital structure of a corporation, it shall not be necessary to recall any previously issued share certificate for either the addition or deletion of the statement required by paragraph (7) of subsection (c) of this Code section to be set forth upon the face of such certificate or for revision of the information placed upon the face or back of the certificate pursuant to subsection (d) of this Code section.

(f) The signatures of the officers of a bank or trust company and the seal of the bank or trust company upon any bond, debenture, or other debt security issued by the bank or trust company may be facsimiles if the instrument is authenticated or countersigned by a trustee or transfer agent, or registered by a registrar, other than the bank or trust company itself or any employee of the bank or trust company.

(g) In case any officer who has signed or whose facsimile signature has been placed upon a share certificate or upon a bond, debenture, or other debt security as provided in this Code section shall have ceased for any reason to be such officer before such certificate or instrument is issued, it may be issued by the bank or trust company with the same effect as if he were such officer at the date of its issue.

(h) Nothing in this Code section shall be construed to invalidate any share certificate validly issued and outstanding on April 1, 1975.

(Code 1933, 41A-1908, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1982, p. 3, 7.)

7-1-418. Issuance and transfer of fractional shares or scrip.

(a) A bank or trust company may, but shall not be obliged to, issue certificates for fractional shares in order to effect share transfers, share distributions or reclassifications, mergers, consolidations, or reorganizations which shall entitle the holder, in proportion to his fractional holdings, to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the bank or trust company in the event of liquidation.

(b) As an alternative, a bank or trust company may pay in cash the fair value of fractional shares as determined by the board of directors as of a time fixed by the board. In the absence of bad faith, all acts of the board pursuant to this subsection shall be conclusive.

(c) As an alternative, the board of directors may issue scrip in registered or bearer form over the manual or facsimile signature of an officer of the bank or trust company or of its agent,

exchangeable as therein provided for full shares; but such scrip shall not entitle the holder to any rights of a shareholder except as therein provided. The board of directors may cause such scrip to be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares before a specified date, or subject to the condition that the shares for which such scrip is exchangeable may be sold by the bank or trust company and the proceeds thereof distributed to the holders of such scrip, or subject to any other conditions which the board of directors may deem advisable. If a bank or trust company issues scrip, it shall provide reasonable opportunity for persons entitled thereto to sell such scrip or to purchase such additional scrip as may be needed to acquire a full share.

(d) A corporation may provide reasonable opportunity for persons entitled to fractional shares to sell such fractional shares or to purchase such additional fractional shares as may be needed to acquire a full share, or may sell fractional shares or scrip for the account of such persons.

(Code 1933, 41A-1909, enacted by Ga. L. 1974, p. 705, 1.)

7-1-419. Subordinated securities.

(a) A bank or trust company may issue notes, debentures, or other obligations in the form of "subordinated securities," provided that they:

(1) Are subordinated in right of payment, in the event of insolvency or liquidation of the bank or trust company, to the prior payment of all deposits of the bank or trust company and of all claims of other creditors of the bank or trust company except the holders of securities on a parity therewith and the holders of securities expressly subordinated thereto;

(2) Are authorized by the same votes of directors and shareholders as those required for authorization of an increase in capital stock of the bank or trust company under Code [Section 7-1-511](#);

(3) Contain provisions for amortization, serial maturities, transfers to a sinking fund, allocation of reserves, or other provisions sufficient to pay or to have paid at maturity all amounts due thereon; and

(4) Are approved by the department prior to the issue thereof.

(b) The aggregate amount of the obligations of a bank or trust company in the form of subordinated securities shall at no time exceed 50 percent of the sum of the unimpaired capital stock, unimpaired paid-in capital, and appropriated retained earnings of the bank or the trust company.

(c) If at or after the payment or retirement of the subordinated securities of a bank or trust company there is or would be a deficiency in the capital stock of the bank or trust company, such fact shall be reported to the department in advance of the payment or retirement. The department

may, upon receipt of such report, order a restoration of capital stock or take other appropriate remedial measures under this chapter.

(d) Subordinated securities shall not be considered in determining the amount of ad valorem taxes payable by the bank or trust company.

(Code 1933, 13-2025.1, enacted by Ga. L. 1965, p. 494, 1; Ga. L. 1968, p. 1045, 6, 7; Code 1933, 41A-1910, enacted by Ga. L. 1974, p. 705, 1.)

PART 10

SHAREHOLDERS

7-1-430. Liability of subscribers and shareholders.

(a) Except as otherwise provided in this Code section, a holder of or subscriber to shares of a bank or trust company shall be under no obligation to the bank or trust company or its creditors with respect to such shares or subscription other than the obligation to pay the full consideration remaining due to the company upon such shares or subscription. Such obligation may be enforced by the bank or trust company and its successors or assigns, or by a shareholder suing derivatively, or by a receiver appointed under this chapter.

(b) Every subscriber for shares not fully paid and every original holder of shares not fully paid which were issued contrary to Code [Section 7-1-417](#) and every transferee or assignee of a subscription for shares or of shares with knowledge or notice that the shares are not fully paid and were issued contrary to Code [Section 7-1-417](#) shall continue personally liable thereon as provided in subsection (a) of this Code section, notwithstanding any transfer or assignment of such shares or subscription for such shares.

(c) Any person becoming a transferee or assignee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable thereon for any unpaid portion of such consideration.

(d) An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, receiver, or other fiduciary shall not be personally liable to the bank or trust company or its creditors as a holder of or subscriber for its shares; but the estate and funds in his hands or under his control shall be so liable. Nothing in the foregoing shall relieve any fiduciary from liability for a breach of trust.

(e) No bailee or nominee and no pledgee or other holder of shares as collateral security shall be personally liable as a shareholder, but the bailor or real party in interest or pledgor or other person transferring such shares as collateral shall be considered the holder thereof for purposes of liability under this Code section.

(f) No liability under this Code section shall be asserted against a subscriber or shareholder more than six years after the date on which the shares for which payment is sought were to have been fully paid pursuant to the contract of sale or subscription agreement or, if no such date is provided for in the contract of sale or subscription agreement, more than six years from the date of the contract of sale or subscription agreement, whether or not such contract or agreement is under seal.

(g) The subscription agreement or contract of sale may prescribe other penalties for failure to make payments when due; but no penalty working a forfeiture of a subscription, or of the amounts paid thereon, shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of 20 days after written demand has been made therefor. The delinquent subscriber or his legal representative shall be entitled to be paid the excess of the sale proceeds realized from the sale by the bank or trust company of such subscribed shares over the sum of:

- (1) The amount due and unpaid on the subscription; and
- (2) The reasonable expenses incurred in selling the shares;

but in no event shall the delinquent subscriber or his legal representative be entitled to be paid an amount greater than the amount paid by said subscriber on his subscription.

(h) The board of directors shall have power to compromise, on such terms and conditions as the board may prescribe, any claim, dispute, or action arising out of a subscription for shares when in the judgment of the board it is in the best interests of the bank or trust company to do so.

(Ga. L. 1919, p. 135, art. 18, 1, 4; Ga. L. 1925, p. 119, 1; Code 1933, 13-1901, 13-1904; Ga. L. 1935, p. 103, 1; Ga. L. 1937, p. 429, 1; Code 1933, 41A-2001, enacted by Ga. L. 1974, p. 705, 1.)

7-1-431. Preemptive rights.

(a) Except as provided in subsection (b) of this Code section or in the articles, a bank or trust company shall issue shares, option rights, or securities having conversion or option rights by first offering them to shareholders of the same class in proportion to their holdings of shares of such class.

(b) Except as provided in the articles, there shall be no preemptive right to:

- (1) Shares issued as a share dividend;
- (2) Fractional shares;

(3) Shares issued pursuant to share plans authorized by subsection (e) of Code [Section 7-1-488](#);

(4) Shares issued pursuant to acquisition of substantially all of the assets of another bank or trust company;

(5) Shares released by waiver from their preemptive right by the affirmative vote or written consent of the holders of two-thirds of the shares of the class to be issued. Any such vote or consent shall be binding on all shareholders and their transferees for the time specified in such vote or consent up to but not exceeding one year from the date thereof and shall protect the bank or trust company, its management, and all persons who may within such time acquire the shares so released;

(6) Shares which have been offered to shareholders to satisfy their preemptive right but not purchased by them within the prescribed time and which are thereafter issued or sold to any other person or persons at a price not less than the price at which they were offered to such shareholders.

(c) Unless otherwise provided in the articles, no holder of shares of any class shall have any preemptive right with respect to shares of any other class which may be issued or sold by the bank or trust company.

(d) Nothing in this Code section shall impair any cause of action or remedy which any shareholder may have for a breach of duty by the board of directors relating to the sale or other disposition by the bank or trust company of shares or securities not subject to the preemptive rights under this Code section or under the articles.

(e) The holders of shares entitled to the preemptive rights shall be given prompt notice setting forth the time within which and the terms and conditions upon which such shareholders may exercise their preemptive rights. Such notice shall be given at least 30 days prior to the expiration of the period during which the rights may be exercised.

(Ga. L. 1919, p. 135, art. 9, 9; Ga. L. 1920, p. 102, 1; Code 1933, 13-1009; Ga. L. 1965, p. 496, 1; Ga. L. 1966, p. 590, 5; Ga. L. 1968, p. 1045, 5; Code 1933, 41A-2002, enacted by Ga. L. 1974, p. 705, 1.)

7-1-432. Meetings of shareholders.

(a) Meetings of the shareholders of a bank or trust company shall be held at such place within or without the state as shall be fixed by the bylaws or by the board of directors pursuant to the bylaws or, if not so fixed, at the main office of the bank or trust company.

(b) There shall be at least one meeting of the shareholders in each calendar year for the election of directors. In addition, any matter relating to the bank or trust company, whether or not stated in the notice of meeting, may be brought up for action, except matters which this chapter requires to be stated in the notice of meeting. The time of such annual meeting shall be fixed by

the bylaws or by the board of directors pursuant to the bylaws. If the annual meeting shall not be called and held during any calendar year, the principal court may, after notice to the bank or trust company, order a substitute annual meeting to be held upon the application of any shareholder. The principal court may issue such orders as may be appropriate, including, without limitation, orders designating the time and place of such meeting, the record date for determination of shareholders entitled to vote, and the form of notice of such meeting.

(c) Special meetings of the shareholders or a special meeting in lieu of the annual meeting of the shareholders may be called by the president, the chairman of the board of directors, the board of directors, or such other officers or persons as may be provided in the articles or bylaws or, in the event there are no officers or directors, then by any shareholder. Special meetings of the shareholders or a special meeting in lieu of the annual meeting of the shareholders shall be called by the bank or trust company upon the written request of the holders of not less than 25 percent of the outstanding shares of the bank or trust company entitled to vote in an election of directors.

(d) Notice of annual and special meetings shall be given to shareholders of record pursuant to Code [Section 7-1-6](#). But when a meeting is adjourned to another time or place, it shall not be necessary, unless the bylaws require otherwise, to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken; and at the adjourned meeting any business may be transacted that might have been transacted on the original date of the meeting. If, however, after the adjournment the board fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given each shareholder of record on the new record date entitled to vote at such meeting.

(e) Any action required by this chapter to be taken at a meeting of the shareholders of a bank or trust company, or any action which may be taken at a meeting of the shareholders, may be taken without a meeting if written consent setting forth the action so taken shall be signed by all the shareholders entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote of shareholders and may be stated as such in any articles or document filed with the Secretary of State or the department under this chapter.

(Ga. L. 1898, p. 78, 6; Civil Code 1910, 2818; Ga. L. 1917, p. 62, 1; Ga. L. 1919, p. 191, art. 19, 1; Code 1933, 13-2001, 109-103; Ga. L. 1947, p. 476, 1; Ga. L. 1947, p. 480, 1; Ga. L. 1966, p. 590, 6; Code 1933, 41A-2003, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1998, p. 795, 19.)

7-1-433. Closing of transfer books or fixing record date.

(a) For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a bank or trust company may provide that the stock transfer books shall be closed for a stated period not to exceed, in any case, 70 days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of

shareholders, such books shall be closed for at least ten days immediately preceding such meeting.

(b) In lieu of closing the stock transfer books, the bylaws or, in the absence of an applicable bylaw, the board of directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than 70 days and, in case of a meeting of shareholders, not less than ten days prior to the date on which the particular action requiring such determination of shareholders is to be taken.

(c) If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed, or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of stockholders.

(d) When a determination of shareholders entitled to vote at any meeting of shareholders has been made, as provided in this Code section, such determination shall apply to any adjournment thereof, unless the board of directors fixes a new record date under this Code section for the adjourned meeting.

(Code 1933, 41A-2004, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 2005, p. 826, 9/SB 82.)

7-1-434. Voting list.

(a) The officer or agent having charge of the stock transfer books for shares of a bank or trust company shall make a complete list of the shareholders entitled to vote at a meeting of shareholders or any adjournment thereof, arranged in alphabetical order, showing the address of each shareholder and the number and class, if any, of shares held by each shareholder. Such list shall be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting for the purposes thereof. Such list shall be prima-facie evidence of who is a shareholder of record; but, in the event of challenge, the record of shareholders required by Code [Section 7-1-439](#) shall control.

(b) If the requirements of this Code section have not been substantially complied with, the meeting shall, on the demand of any shareholder in person or by proxy, be adjourned until the requirements are complied with.

(c) If no such demand is made, failure to comply with the requirements of this Code section shall not affect the validity of any action taken at such meeting.

(d) Notwithstanding subsections (a) through (c) of this Code section, it shall not be necessary to prepare or produce a list of shareholders in any case where the record of shareholders is presented and readily shows, in alphabetical order or by alphabetical index and by classes, if any, the names of the shareholders entitled to vote, with the address of and the number of shares held by each.

(Code 1933, 41A-2005, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1977, p. 730, 6.)

7-1-435. Quorum of shareholders.

(a) Except as provided in subsection (d) of this Code section or the articles or in bylaws adopted by the shareholders, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders.

(b) If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number, or voting by classes, is required by this chapter, or the articles, or bylaws.

(c) When a quorum is once present to organize a meeting, the shareholders present may continue to do business at the meeting or at any adjournment thereof, notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

(d) If a meeting cannot be organized for lack of a quorum, those present may adjourn the meeting to such time and place as they may determine. In the case of a meeting for the election of directors which is twice adjourned for lack of a quorum, those present at the second of such adjourned meetings, of which notice has been given in writing to shareholders pursuant to Code [Section 7-1-6](#), shall constitute a quorum for the election of directors without regard to the other quorum requirements of this Code section, the articles, or bylaws.

(Code 1933, 41A-2006, enacted by Ga. L. 1974, p. 705, 1.)

7-1-436. Voting of shares.

(a) Unless otherwise provided in the articles, each outstanding share entitled to vote, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders. A subscriber shall not be entitled to vote the share subscribed for until such shares have been fully paid.

(b) Treasury shares shall not be voted at any meeting nor counted in determining the total number of outstanding shares at any given time.

(c) The chairman of the board, president, any vice-president, the secretary, or the treasurer of a corporation which is the holder of record of shares of a bank or trust company shall be deemed by the bank or trust company to have authority to vote such shares and to execute proxies and written waivers and consents in relation thereto, whether such shares are held in a fiduciary capacity or otherwise, unless, before a vote is taken or a waiver of consent is acted upon, it is made to appear by a certified copy of the bylaws or resolution of the board of directors or executive committee of the corporation holding such shares that such authority does not exist or

is vested in some other officer or person. In the absence of such certification, a person executing any such proxies, waivers, or consents or presenting himself at a meeting as one of such officers of a corporate shareholder shall, for the purposes of this Code section, be prima facie deemed to be duly elected, qualified, and acting as such officer and to be fully authorized; and, in the case of conflicting representation, the corporate shareholder shall be deemed to be represented by its senior officer in the order first stated in this subsection.

(d) Shares held by an administrator, executor, guardian, or conservator may be voted by him, either in person or by proxy, without a transfer of such shares into his name. Shares standing in the name of a trustee may be voted by him, either in person or by proxy; but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name or the name of his nominee. Shares standing in the name of a person as life tenant may be voted by him, either in person or by proxy, unless the record of shareholders shows that he is not entitled to vote such shares.

(e) Shares standing in the name of a receiver may be voted by such receiver; and shares held by or under the control of a receiver may be voted by such receiver without a transfer thereof into his name if authority to do so is contained in an order of the court by which such receiver was appointed.

(f) If a share or shares stand of record in the names of two or more persons, whether fiduciaries, joint tenants, tenants in common, tenants in partnership, or otherwise, or if two or more persons have the same fiduciary relationship respecting the same share or shares, then unless the instrument or order appointing them or creating the tenancy otherwise directs and such instrument or order or a copy thereof is filed with the secretary of the bank or trust company, their acts with respect to voting shall have the following effect:

- (1) If only one votes, in person or by proxy, his act binds all;
- (2) If more than one votes, in person or by proxy, the act of the majority so voting binds all;
- (3) If more than one votes in person or by proxy but the votes are evenly split on any particular matter, each faction is entitled to vote the share or shares in question proportionally;
- (4) If the instrument or order so filed shows that any such tenancy is held in unequal interest, a majority or even-split for purposes of this subsection shall be a majority or even-split in interest;
- (5) The principles of this subsection shall apply, insofar as possible, to execution of proxies, waivers, consents, or objections and for the purpose of ascertaining the presence of a quorum.

(g) A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, or a nominee of the pledgee; and thereafter the pledgee or his nominee shall be entitled to vote the shares so transferred.

(h) Notwithstanding subsections (a) through (g) of this Code section, a corporation shall be protected in treating the persons in whose names shares stand on the record of shareholders as the owners thereof for all purposes.

(i) When notice of redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem such shares has been set aside to pay the redemption price to shareholders, such shares shall not be entitled to vote in any manner and shall not be deemed to be outstanding shares.

(Code 1933, 41A-2007, enacted by Ga. L. 1974, p. 705, 1.)

7-1-437. Proxies.

(a) Unless otherwise unlawful, a person or corporation who is entitled to attend a shareholders' meeting, to vote thereat, or to execute consents, waivers, or releases may be represented at such meeting or vote thereat, and execute consents, waivers, and releases, and exercise any of his or her other rights, by one or more agents, who may be either an individual or individuals or any domestic or foreign corporation, authorized by a written proxy or electronic transmission of proxy executed by such person or by his or her attorney in fact.

(b) No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the person executing it, except as otherwise provided in this Code section.

(c) Subject to the limitation of subsection (b) of this Code section, any proxy duly executed is not revoked and continues in full force and effect until an instrument revoking it, or a duly executed proxy bearing a later date, is received by the secretary of the bank or trust company. A proxy is not revoked by the death or incapacity of the maker unless, before the vote is counted or the authority is exercised, written notice of such death or incapacity is received by the secretary of the bank or trust company. Notwithstanding that a valid proxy is outstanding, the powers of the proxyholder are suspended, except in the case of a valid proxy which is by law irrevocable and which states on its face that it is irrevocable, if the maker is present at the meeting and elects to vote in person.

(d) If a proxy for the same shares confers authority upon two or more persons and does not otherwise provide, a majority of them present at the meeting or, if only one is present, then that one may exercise all the powers conferred by the proxy; but, if the proxyholders present at the meeting are divided as to the right and manner of voting in any particular case and there is no majority, the voting of said shares shall be prorated.

(e) If a proxy expressly provides, any proxyholder may, unless otherwise unlawful, appoint in writing a substitute to act in his place.

(f) A shareholder shall not sell his vote or issue a proxy to vote to any person for any sum of money or anything of value, except as permitted in this Code section and in Code [Section 7-1-438](#), relating to shareholders' agreements.

(g) To be irrevocable, a proxy must be entitled "IRREVOCABLE PROXY," must state that it is irrevocable, must not otherwise be unlawful, and must be held by any of the following or by a nominee of any of the following:

(1) A pledge or other person holding a security interest in the shares;

(2) A person who has purchased or agreed to purchase the shares;

(3) A creditor or creditors of the bank or trust company who extend or continue credit to the bank or trust company in consideration of the proxy, if the proxy states that it was given in consideration of such extension or continuation of credit, the amounts thereof, and the name of the person extending or continuing credit;

(4) A person who has contracted to perform services as an officer of the bank or trust company, if a proxy is required by the contract of employment and if the proxy states that it was given in consideration of such contract of employment, the name of the employee, and the period of employment contracted for;

(5) A person designated by or under an agreement under Code [Section 7-1-438](#), relating to shareholders' agreements.

(h) Notwithstanding a provision in a proxy stating that it is irrevocable, the proxy becomes revocable after the pledge or security interest is redeemed, or the debt of the bank or trust company is paid, or the period of employment provided for in the contract of employment has terminated, or the agreement under Code [Section 7-1-438](#), relating to shareholders' agreements, has terminated; and, in a case provided for in paragraph (3) or (4) of subsection (g) of this Code section, a proxy becomes revocable three years after the date of the proxy or at the end of the period, if any, specified therein, whichever period is less, unless the period of irrevocability is renewed from time to time by the execution of a new irrevocable proxy as provided in this Code section. This subsection does not affect the duration of a proxy under subsection (b) of this Code section.

(i) A proxy may be revoked, notwithstanding a provision making it irrevocable, by a purchaser of shares without knowledge of the existence of the provision unless the existence of the proxy and its irrevocability are noted conspicuously on the face or back of the certificate representing such shares.

(Code 1933, 41A-2008, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1975, p. 445, 24; Ga. L. 2007, p. 502, 3/SB 70.)

7-1-438. Shareholders' agreements.

(a) Unless otherwise unlawful, an agreement between two or more shareholders, if in writing and signed by the parties thereto and if a copy thereof is delivered to the department and

approved by the department when, in its discretion, such agreement is in the best interest of the bank and the public, may provide that in exercising any voting rights the shares held by them shall be voted as therein provided, or as they may agree, or as determined in accordance with a procedure agreed upon by them. Nothing herein shall impair the right of the bank or trust company to treat the shareholders of record as entitled to vote the shares standing in their names.

(b) The duration of any agreement permitted by subsection (a) of this Code section shall not exceed 20 years. Failure to state a period of duration or stating a period of duration in excess of 20 years shall not invalidate the agreement, but in either such case the period of duration of the agreement shall be 20 years. Any such agreement shall be renewable at any time before the expiration of such 20 year period by agreement of all the shareholders bound thereby at the date of renewal.

(c) A transferee of shares in a bank or trust company whose shareholders have entered into an agreement authorized by subsection (a) of this Code section shall be bound by such agreement or any renewal of such agreement authorized by subsection (b) of this Code section if he takes the shares with notice thereof. A transferee shall be deemed to have notice of any such agreement or any renewal if the existence thereof is noted on the face or back of the certificate or certificates representing such shares.

(Code 1933, 41A-2009, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1975, p. 445, 25.)

7-1-439. Books and records.

(a) Each bank and trust company shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its shareholders, board of directors, and committees of directors; and each bank and trust company shall keep at its registered office or main office or at the office of its transfer agent or registrar a record of its shareholders, giving the names and addresses of all shareholders and the number, class, and series, if any, of the shares held by each.

(b) The department may, by regulation, prescribe the minimum disclosure of corporate records and reports which must be made by the bank or trust company to its shareholders at each annual meeting. In issuing such regulations, the department shall consider the legitimate rights of a shareholder to sufficient information to evaluate the management and use of his investment and to elect qualified directors for the bank or trust company as well as the rights of customers of the bank or trust company to maintain the confidentiality of their business affairs.

(c) Nothing in this Code section shall impair the power of any court of competent jurisdiction, upon proof by a shareholder of proper purpose, irrespective of the period of time during which such shareholder shall have been a shareholder of record and irrespective of the number of shares held by him, to compel the production or examination by such shareholder of the books and records of account, minutes, and record of shareholders of a bank or trust company.

(Ga. L. 1919, p. 135, art. 19, 4; Code 1933, 13-2004; Code 1933, 41A-2010, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1975, p. 445, 26; Ga. L. 1998, p. 795, 20; Ga. L. 2004, p. 631, 7.)

7-1-440. Derivative actions by shareholders - When proper.

A derivative action may be brought by a shareholder in the right of the bank or trust company to procure a judgment in its favor against directors, officers, or other representatives of the bank or trust company, or shareholders, or third parties, or any combination thereof, whenever the bank or trust company has a claim or cause of action which the representatives of the bank or trust company, in violation of their duties, have failed to enforce, including a claim or cause of action against such representatives for their failure in this respect.

(Code 1933, 41A-2011, enacted by Ga. L. 1974, p. 705, 1.)

7-1-441. Derivative actions by shareholders - Restrictions on.

(a) In a derivative action brought by one or more shareholders of a bank or trust company to procure a judgment in its favor, the representatives of the bank or trust company wrongfully having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff is a shareholder of record at the time of bringing the action. It shall further allege:

(1) That the plaintiff had purchased his shares or was a shareholder of record at the time of the transaction of which he complains or that his shares thereafter devolved on him through one or more transfers by operation of law from one who was a holder of record or member at such time; or

(2) That the plaintiff is the holder of record of shares which at the time of the transaction of which he complains were held of record by a trustee of a trust in which the plaintiff held a beneficial interest or in which a beneficial interest was held by one from whom the shares have devolved upon the plaintiff through one or more transfers by operation of law.

(b) In any such action the complaint shall also allege with particularity the efforts of the plaintiff to secure the initiation of such action by the board of directors or comparable authority, or the reasons for not making such effort.

(c) Such action shall not be discontinued, compromised, or settled without the approval of the court having jurisdiction of the action. If the court shall determine that the interests of the members or of the shareholders of any class or classes will be substantially affected by such discontinuance, compromise, or settlement, the court shall direct that notice, by publication or otherwise, of the action and the proposed discontinuance, compromise, or settlement thereof be given to the members or to the shareholders of the class or classes whose interests it determines will be so affected; if notice is so directed to be given, the court may determine which one or

more of the parties to the action shall bear the expense of giving the same in such amount as the court shall determine and find to be reasonable in the circumstances.

(d) If such action is successful, in whole or in part, or if anything is received by the plaintiff or plaintiffs as the result of the judgment or compromise or settlement of the action, the court may award the plaintiff or plaintiffs reasonable expenses, including reasonable fees of attorneys, and shall direct him or them to account to the bank or trust company for the remainder of the proceeds so received by him or them.

(e) In any such action, the court having jurisdiction, upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the parties named as defendants the reasonable expenses, including fees of attorneys, incurred by them in the defense of such action; and such damages as the court may assess shall be paid to the bank or trust company for damages such bank or trust company may have sustained due to adverse publicity brought about as a result of action brought without reasonable cause.

(Code 1933, 41A-2012, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1975, p. 445, 27.)

PART 11

DIVIDENDS, DISTRIBUTIONS, AND PREFERRED SHARE ACQUISITION

7-1-460. Restrictions on payment of dividends; limitation of actions for dividends or distributions.

(a) The board of directors of a bank or trust company may, from time to time, declare and the bank or trust company thereupon shall pay dividends on its outstanding shares in cash, property, or its own shares, except when the bank or trust company is insolvent or when the payment thereof would render the bank or trust company insolvent or when the declaration or payment thereof would be contrary to any restrictions contained in the articles, and subject to the following provisions:

(1) Dividends may be declared and paid in cash or property only out of the retained earnings of the bank or trust company;

(2) Dividends may not be declared or paid at any time that the bank or trust company does not have the paid-in capital and appropriated retained earnings required by Code [Section 7-1-411](#), except the department may approve the payment of dividends by a Subchapter S bank, prior to cumulative profitability, for the sole purpose of providing its shareholders with a source of funds to pay federal and state income taxes on the Subchapter S bank's income that is taxable to those shareholders;

(3) Dividends may not be paid without the prior approval of the department in excess of specified amounts as may be fixed by regulations of the department to assure that banks and trust companies maintain an adequate capital structure;

(4) Dividends may be declared and paid in lawfully held treasury shares or in authorized but unissued shares, provided that, in the case of a dividend of authorized but previously unissued shares, there shall be transferred to capital stock an amount equal to the aggregate par value of the shares distributed and, after payment of the dividend, the bank or trust company continues to maintain the paid-in capital and appropriated retained earnings required by Code [Section 7-1-411](#); and

(5) No dividends payable in shares of any class shall be paid in respect to shares of any other class unless the articles so provide or unless such payment is authorized by the affirmative vote or the written consent of the holders of a majority of the outstanding shares of the class in which the payment is to be made.

(b) A split or division of the issued shares of any class into a greater number of shares of the same class without increasing the capital stock of the bank or trust company shall not be construed to be a share dividend within the meaning of this Code section.

(c) If a bank or trust company has declared a cash dividend on any shares or any other distribution payable in cash or has sold fractional shares or scrip for the account of a shareholder and has mailed to a shareholder, at his address appearing on the records of the bank or trust company, a valid check in the amount of the dividend or other distribution or the proceeds of such sale to which such shareholder is entitled and, if such check would have been honored if duly presented to the bank on which it is drawn, no action for the recovery of such dividend or other distribution or for the amount thereof shall be brought by the shareholder or other person entitled thereto more than seven years after the date of mailing the check.

(d) If a bank or trust company has declared a dividend payable in its own shares or any other distribution payable in its own shares or in other than cash and has mailed to a shareholder, at his address appearing on the records of the bank or trust company, a certificate representing such shares or a notice setting forth the time and manner in which a distribution in other than its own shares or cash shall be paid, no action for the recovery of such dividends or other distribution or for the amount thereof shall be brought by the shareholder or other person entitled thereto more than seven years after the mailing of the share certificate or certificates or, in the case of a distribution in other than the shares of the bank or trust company or in cash, the time specified in the notice for the payment thereof.

(e) When the statute of limitations provided for in this Code section has run with respect to any unclaimed dividend, other unclaimed distribution, or unclaimed proceeds of the sale of fractional shares or scrip, the cash or property represented thereby shall thenceforth be treated as an asset of the bank or trust company.

(Ga. L. 1919, p. 135, art. 19, 29, 30; Code 1933, 13-2029, 13-2030, 13-2031, 13-2032; Code 1933, 41A-2101, enacted by Ga. L. 1974, p. 705, 1.)

7-1-461. Distribution upon reduction of capital stock or paid-in capital.

(a) Upon the decrease of capital stock of a bank or trust company pursuant to amendment of its articles as provided in this chapter, the board of directors, subject to restrictions of the articles, may distribute to the shareholders of the bank or trust company an amount in cash equal to all or part of the amount of the decrease in capital stock, if immediately after such distribution the bank or trust company would have the capital stock required by this chapter and would have the paid-in capital and appropriated retained earnings required by Code [Section 7-1-411](#).

(b) Any portion of the amount of a decrease in capital stock which is not distributed to shareholders in accordance with this Code section shall be transferred to paid-in capital.

(c) A bank or trust company, by resolution of its board of directors, may distribute to its shareholders amounts representing a reduction in its paid-in capital, provided that after such distribution the institution shall continue to have the paid-in capital and appropriated retained earnings required by Code [Section 7-1-411](#) and provided that such distribution shall first be approved in writing by the department.

(Code 1933, 41A-2102, enacted by Ga. L. 1974, p. 705, 1.)

7-1-462. Dividends and distributions must be authorized by chapter.

The directors of a bank or trust company shall not declare dividends or authorize or ratify the distribution of any part of its assets to shareholders by purchase of its shares or otherwise, except as authorized by this chapter.

(Code 1933, 41A-2103, enacted by Ga. L. 1974, p. 705, 1.)

7-1-463. Preferred share acquisition.

(a) Unless otherwise provided in its articles, a bank or trust company, by resolution of its board of directors and with the prior approval of the department, may redeem or otherwise acquire preferred shares, if immediately after the redemption or other acquisition the bank or trust company would have the paid-in capital and appropriated retained earnings required by Code [Section 7-1-411](#). In determining whether or not to give its approval under this subsection, the department shall give primary consideration to the question of whether or not, after the cancellation of the preferred shares, the capital accounts of the bank or trust company would be adequate to support its anticipated deposit or trust business.

(b) Preferred shares which are redeemed or otherwise acquired shall be canceled and shall not be reissued without prior approval of the department.

(Code 1933, 41A-2104, enacted by Ga. L. 1974, p. 705, 1.)

PART 12

MANAGEMENT

7-1-480. Board of directors.

(a) Administration of the business and affairs of a bank or trust company shall be the responsibility of a board of directors.

(b) Seventy-five percent of the directors shall be citizens of the United States and at least a majority shall:

(1) Reside in Georgia; or

(2) Reside within 40 miles of any banking location authorized to offer a complete banking or trust service.

(c) The residency requirements of paragraphs (1) and (2) of subsection (b) of this Code section shall not apply to banks having branches in states other than Georgia, provided the residency of directors is consistent with the bank's articles of incorporation and bylaws.

(d) The department may waive or modify the requirements of subsection (b) of this Code section with respect to special purpose banks organized pursuant to subsection (c) of Code [Section 7-1-394](#).

(e) Notwithstanding other provisions of this Code section, directors who were legally qualified to serve on April 1, 1975, may continue to serve for such time as they are continuously members of the board of directors of their bank or trust company.

(Ga. L. 1898, p. 78, 4; Civil Code 1910, 2818; Ga. L. 1917, p. 62, 1; Ga. L. 1919, p. 135, art. 19, 1, 2; Ga. L. 1927, p. 195, 8; Code 1933, 13-2001, 13-2002, 109-103; Ga. L. 1943, p. 249, 3; Ga. L. 1947, p. 476, 1; Ga. L. 1947, p. 480, 1; Ga. L. 1949, p. 378, 1; Ga. L. 1959, p. 323, 1; Ga. L. 1961, p. 196, 1; Ga. L. 1966, p. 590, 6; Ga. L. 1973, p. 811, 1; Code 1933, 41A-2201, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1986, p. 458, 6; Ga. L. 1987, p. 1586, 7; Ga. L. 1997, p. 485, 15; Ga. L. 2000, p. 174, 9; Ga. L. 2001, p. 970, 4.)

7-1-481. Adopting, amending, and repealing bylaws.

The board of directors shall have the power to adopt, amend, or repeal bylaws as specified in paragraph (4) of Code [Section 7-1-260](#) unless such power is reserved exclusively to the shareholders by the articles or in bylaws previously adopted by the shareholders; but any bylaws adopted by the board of directors may be altered, amended, or repealed and new bylaws adopted by the shareholders. The shareholders may prescribe that any bylaw or bylaws adopted by them shall not be altered, amended, or repealed by the board of directors. Copies of the bylaws and

any change, addition, or amendment thereto shall be filed with the department immediately upon adoption by the directors or the shareholders.

(Ga. L. 1898, p. 78, 5; Civil Code 1910, 2819; Code 1933, 109-104; Code 1933, 41A-2202, enacted by Ga. L. 1974, p. 705, 1.)

7-1-482. Number, term, and compensation of directors.

(a) The articles or bylaws of any bank or trust company may fix the number of directors of its policy-making board at not less than five nor more than 25 and may provide that the board may, within such limitation, increase or decrease the number of directors by not more than two in any one year, provided that nothing in this subsection shall require a bank with a board of directors of less than five on July 1, 1972, to increase its board to five members. The failure of a bank or trust company to maintain at least five directors at any time does not exculpate the remaining directors from their obligations and liabilities associated with the actions and decisions made as directors of the financial institution, nor does it in any way void any actions taken or decisions made by the board of directors during any such time that there were less than five directors.

(b) Except as otherwise provided in this chapter, each director shall be elected by the shareholders for a term of one year or for staggered terms as provided in Code [Section 14-2-806](#) and shall serve until he or she resigns, is removed, or becomes disqualified or until his or her successor shall have been duly elected and qualified.

(c) Except as otherwise provided in the articles or bylaws, the board of directors may fix the compensation for directors; and a director may be a salaried officer of the bank or trust company.

(d) Notwithstanding the requirements of this Code section, the board of directors of a bank may appoint one or more nonpolicy-making regional boards of directors to consist of a number of persons to be determined by the board. The members of such regional boards may not set bank policy but may exercise certain powers, duties, and responsibilities as delegated by the board. Such regional board members shall have the same status as nonpolicy-making officers of the bank. All such delegations shall be documented in detail in the minutes of the board.

(Ga. L. 1898, p. 78, 4; Civil Code 1910, 2818; Ga. L. 1917, p. 62, 1; Ga. L. 1919, p. 135, art. 19, 1; Code 1933, 13-2001, 109-103; Ga. L. 1947, p. 476, 1; Ga. L. 1947, p. 480, 1; Ga. L. 1966, p. 590, 6; Code 1933, 41A-2203, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 2000, p. 174, 10.)

7-1-483. Meetings of board; quorum; committees; acting without meeting.

(a) The board of directors shall hold regular meetings at such times as may be fixed by the bylaws and shall at all times be subject to call by the chairman of the board, by the president, or by any two members of the board. The board shall meet at least once in ten different months of

each calendar year unless an alternative schedule is approved in writing by the department, but in no event shall the board meet less frequently than once in each calendar quarter.

(b) Unless otherwise provided in the articles or bylaws:

(1) A majority of all the directors in office shall constitute a quorum for the transaction of business; and actions of a majority of those present at a meeting at which a quorum is present shall be actions of the board;

(2) The board of directors may designate three or more of its number to constitute an executive committee or other committees which, to the extent provided in such resolution, shall have and exercise the authority of the board of directors in regard to the business of the bank or trust company; and

(3) Any action which may be taken at a meeting of the directors or of the members of an executive or other committee may be taken without a meeting if a consent or consents in writing setting forth the action shall be signed by all of the directors or all of the members of the executive or other committee and filed with the secretary of the bank or trust company.

(Ga. L. 1898, p. 78, 4; Civil Code 1910, 2818; Ga. L. 1917, p. 62, 1; Ga. L. 1919, p. 135, art. 19, 4; Code 1933, 13-2004, 109-103; Ga. L. 1947, p. 476, 1; Code 1933, 41A-2204, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1975, p. 445, 28; Ga. L. 1988, p. 296, 1.)

7-1-484. Oath of directors; liability of persons who have not subscribed to such oath.

(a) Each director, before assuming office, shall take an oath or affirmation that he will diligently and honestly perform his duties in the administration of the affairs of the bank or trust company, that he will not permit a willful violation of law by the bank or trust company, and that he meets the eligibility requirements of this chapter and of the articles and bylaws.

(b) A copy of the oath shall be signed by each director and shall be placed into the minutes of the meetings of the directors. No director shall be authorized to participate in the affairs of the board or receive any compensation for service as a director until the oath has been executed by such director. Any person seeking to act in the capacity of a director before subscribing to the oath and otherwise qualifying for service pursuant to the bylaws of the bank or the laws and regulations governing the operations of the bank shall be fully liable for his actions to the same extent as if that person had qualified to serve as a bank director.

(Ga. L. 1919, p. 135, art. 19, 3; Code 1933, 13-2003; Code 1933, 41A-2205, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1981, p. 1366, 12; Ga. L. 1990, p. 8, 7.)

7-1-485. Removal of directors; vacancies.

(a) The entire board of directors or an individual director may be removed without cause by the vote of shareholders entitled to cast at least a majority of the votes which all shareholders would be entitled to cast at an annual election of directors.

(b) The board may remove a director from office if:

(1) He is adjudicated an incompetent by a court or is convicted of a felony;

(2) He does not, within 60 days after his election or such longer time as the bylaws may specify, accept the office in writing or by attendance at a meeting and fulfill other requirements for holding the office;

(3) He fails to attend regular meetings of the board for six successive meetings without having been excused by the board; or

(4) He was an employee or duly elected officer of the bank or trust company and was discharged or resigned at the request of the board for reasons relating to performance of duties as an employee or officer of the bank or trust company.

(c) Vacancies in the board of directors, whether caused by removal or otherwise and including vacancies resulting from an increase in the number of directors, may be filled by the remaining members of the board, even though less than a quorum. Each director so elected shall be a director until his successor is elected by the shareholders, who shall make such election at the next annual meeting of shareholders or at any special meeting called for that purpose prior thereto.

(Ga. L. 1919, p. 135, art. 19, 1; Code 1933, 13-2001; Ga. L. 1947, p. 480, 1; Ga. L. 1966, p. 590, 6; Code 1933, 41A-2206, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1981, p. 1366, 13; Ga. L. 1989, p. 1211, 9.)

7-1-486. Honorary and advisory positions.

The board of directors of any bank or trust company may appoint an individual as an honorary director or director emeritus or member of an advisory board. An individual so appointed may be compensated but may not vote at any meeting of the board of directors or be counted in determining a quorum and shall not have any responsibility or be subject to any liability imposed upon a director, or otherwise be deemed a director.

(Code 1933, 41A-2207, enacted by Ga. L. 1974, p. 705, 1.)

7-1-487. Audits and financial reports.

(a) The board of directors shall at least once each year have made by independent certified public accountants an audit of the books and affairs of the bank or trust company, including such matters as may be required by the department and including, in the case of a trust company, accounts held in a fiduciary or other representative capacity. An audit of a bank holding company performed in accordance with this Code section may be made in lieu of individual audits of subsidiaries of the bank holding company. The department may by regulation establish minimum standards for audits and reports under this Code section.

(b) A report of the audit made under subsection (a) of this Code section shall be signed by the accountants who make it. A signed copy of the report shall be submitted to the board for approval or rejection and kept in the files of the bank or trust company. The bank or trust company shall submit the audit to the department in accordance with department regulations.

(Code 1933, 41A-2208, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1989, p. 1211, 10; Ga. L. 1997, p. 485, 16.)

7-1-488. Officers, agents, and employees; employee share plans.

(a) A bank or trust company shall have a president, a secretary, and such other officers as the directors may from time to time designate. An individual may hold more than one office, except that the individual shall not be both president and secretary.

(b) Except as otherwise provided in the articles or bylaws, the board of directors shall elect the officers, fix their compensation, and fill vacancies, however occurring. An officer elected or appointed by the board may be removed by the board at any time, whenever in its judgment the best interests of the institution will be served thereby, without prejudice to any contract right of such officer. The department shall immediately be notified in writing when the individual holding the position of chief executive officer of the bank changes.

(c) The officers, as between themselves and the bank or trust company, shall have such authority and perform such duties as may be provided in the bylaws adopted by the board.

(d) A bank or trust company may also employ such agents or employees as may be required for the prompt and orderly discharge of its business.

(e)(1) Except as otherwise provided in the articles, a bank or trust company may adopt and carry out a plan, approved by the directors and the affirmative vote of a majority of the shares entitled to vote thereon, for the sale of shares, or for the granting of options for shares, to some or all of the officers and employees of the bank or trust company or of any affiliate of the bank or trust company or to a trustee on behalf of such employees, upon such terms and conditions and in such manner as may be provided by the bylaws or by the board. In any such plan:

(A) Such shares may be sold or optioned upon terms (not less than the par value thereof) which are deemed advantageous to the bank or trust company by the directors other than directors who may benefit by their action or, if the number of directors who will not benefit by the action is fewer than three, by the shareholders; and

(B) In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders as to the adequacy of the consideration received for any rights or options to purchase shares under the plan shall be conclusive.

(2) Such a plan may be adopted whether or not it qualifies for special tax treatment under the laws of the United States.

(Ga. L. 1898, p. 78, 5; Civil Code 1910, 2819; Ga. L. 1919, p. 135, art. 19, 9; Ga. L. 1922, p. 63, 1; Code 1933, 13-2009, 109-104; Code 1933, 13-912, enacted by Ga. L. 1966, p. 590, 3; Ga. L. 1968, p. 1045, 1; Ga. L. 1969, p. 958, 1; Code 1933, 41A-2209, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1981, p. 1366, 14; Ga. L. 1995, p. 673, 17.)

7-1-489. Bonds.

Any director who is authorized to handle money or negotiable assets on behalf of a bank or trust company and all officers and employees of a bank or trust company shall be bonded by a regularly incorporated surety company authorized to do business in this state, and the bank or trust company may pay the cost of such bonds. The form, amount, and surety of such bonds shall be such as are approved by the board of directors; but the department may require an additional amount or new or additional surety.

(Ga. L. 1919, p. 135, art. 19, 10; Ga. L. 1920, p. 102, 1; Ga. L. 1922, p. 63, 1; Code 1933, 13-2010; Code 1933, 41A-2210, enacted by Ga. L. 1974, p. 705, 1.)

7-1-490. Responsibility of directors and officers; delegation of investment decisions.

(a) Directors and officers of a bank or trust company shall discharge the duties of their respective positions in good faith and with that diligence, care, and skill which ordinarily prudent men would exercise under similar circumstances in like positions. In discharging his duties, a director or officer, when acting in good faith, shall be entitled to rely upon information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

(1) One or more officers or employees of the bank or trust company whom the director or officer reasonably believes to be reliable and competent in the matters presented;

(2) Counsel, public accountants, or other persons as to matters which the director or officer reasonably believes to be within such person's professional or expert competence; or

(3) A committee of the board upon which the director or officer does not serve, duly designated in accordance with a provision of the articles of incorporation or the bylaws, as to matters within that committee's designated authority, which committee the director or officer reasonably believes to merit confidence;

but such director or officer shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause such reliance to be unwarranted. A director or officer who so performs his duties shall have no liability by reason of being or having been a director or officer of the bank or trust company.

(b) A bank, through its board of directors, may delegate to a correspondent bank the power to determine, within the limits set by law, the investments in which its assets, including reserve assets, may be held, provided that the bank must obtain the prior written approval of the department for such delegation.

(Code 1933, 41A-2211, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1977, p. 730, 7; Ga. L. 1982, p. 3, 7.)

7-1-491. Financing involving directors or officers.

In addition to other provisions in this chapter and federal law, a bank or trust company shall not make loans or otherwise extend financing to any one of its directors or policy-making officers except on terms, rates, and conditions which are not preferential. Preferential terms, rates, and conditions shall be determined by comparison to those terms, rates, and conditions offered contemporaneously to other borrowers making substantially similar loan requests, having substantially similar credit histories, and offering substantially similar collateral. Such loans shall be made only after the application of prudent loan underwriting criteria normally applied to loan requests of a similar nature from applicants who are not directors and policy-making officers. Approval procedures for such loans should be designed to minimize any potential abuse by bank insiders.

(Ga. L. 1919, p. 135, art. 19, 11, 12; Ga. L. 1920, p. 102, 1; Code 1933, 13-2011, 13-2012; Ga. L. 1968, p. 329, 1; Code 1933, 41A-2212, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1978, p. 1717, 5; Ga. L. 1983, p. 602, 12; Ga. L. 1984, p. 949, 5; Ga. L. 1995, p. 673, 18.)

7-1-492. Prohibitions applicable to directors, officers, and employees.

(a) No director, officer, or employee of a bank or trust company shall:

(1) Receive anything of value for procuring or attempting to procure any loan from or investment by the bank or trust company;

(2) Purchase, or directly or indirectly be interested in purchasing, from the bank or trust company for less than its face value any promissory note or other evidence of indebtedness issued by the bank or trust company;

(3) Purchase or sell any other asset to the bank or trust company except:

(A) Upon terms not less favorable to the bank or trust company than those offered to other persons or corporations; and

(B) With the prior approval of the board of directors or a committee thereof authorized to act for the board, unless the transaction is made in the regular course of business.

(b) No director shall be eligible to vote concerning any purchase or sale where he is or would be a party to the transaction.

(c) It shall be unlawful for any bank or trust company to lend to any officer, director, or employee any funds held in trust under powers granted in this chapter.

(Code 1933, 41A-2213, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1996, p. 848, 7.)

7-1-493. Actions against directors and officers.

(a) An action may be brought by any of the persons named in subsection (b) of this Code section against one or more directors or officers of a bank or trust company to procure for the benefit of the bank or trust company a judgment for the following relief:

(1) To compel the defendant to account for his official conduct, or to decree any other relief called for by his official conduct, in the following cases:

(A) The neglect of, failure to perform, or other violation of his duties in the management of the bank or trust company or in the disposition of corporate assets committed to his charge;

(B) The acquisition by himself, transfer to others, loss, or waste of corporate assets due to any neglect of, failure to perform, or other violation of his duties;

(C) The appropriation, in violation of his duties, of any business opportunity of the bank or trust company;

(2) To enjoin a proposed unlawful conveyance, assignment, or transfer of corporate assets or other unlawful corporate transaction, where there is sufficient evidence that it will be made;

(3) To set aside an unlawful conveyance, assignment, or transfer of corporate assets, where the transferee knew of its unlawfulness and is made a party to the action.

(b) An action may be brought for the relief provided in this Code section and in Code [Section 7-1-494](#), relating to the liability of directors in certain cases, by the bank or trust company, or by a receiver, trustee in bankruptcy, officer, director, or judgment creditor thereof, or by a shareholder in accordance with Code [Sections 7-1-440](#) and [7-1-441](#), relating to derivative actions.

(c) No action shall be brought for the relief provided in this Code section more than four years from the time the cause of action accrued.

(d) This Code section shall not limit any liability otherwise imposed by law upon any director or officer or any third party, provided that after April 1, 1975, Code [Section 14-4-65](#), relating to improper dividends and liability of officers, shall no longer be applicable to officers or directors of banks or trust companies.

(e) Notwithstanding the foregoing, a bank or trust company may provide through an amendment to its articles of incorporation for the elimination or limitation of the personal liability of a director to the shareholders of the bank or trust company to the same extent as a business corporation incorporated under the provisions of [Chapter 2 of Title 14](#), provided that such an amendment to the articles of incorporation must be adopted by the affirmative vote of two-thirds of the total shares outstanding.

(Code 1933, 41A-2214, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1975, p. 445, 29; Ga. L. 1987, p. 1586, 8; Ga. L. 1993, p. 917, 4.)

7-1-494. Liability of directors in certain cases.

(a) In addition to any other liabilities imposed by law upon directors of a bank or trust company:

(1) Directors of a bank or trust company who vote for or assent to the declaration of any dividend or other distribution of the assets of a bank or trust company to its shareholders which is not authorized by this chapter or is contrary to any restrictions contained in the articles shall be jointly and severally liable to the bank or trust company for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this chapter or the restrictions in the articles to the extent that any depositor, creditor, or shareholder of the bank or trust company has suffered damage as a result thereof; and

(2) The directors of a bank or trust company who vote for or assent to any distribution of assets of a bank or trust company to its shareholders during the voluntary liquidation of the bank or trust company without the payment and discharge of, or making adequate provisions for, all known debts, obligations, and liabilities of the bank or trust company shall be jointly and severally liable to the bank or trust company for the value of such assets which are distributed, to the extent that such debts, obligations, and liabilities of the bank or trust company are not thereafter paid and discharged.

(b) A director of a bank or trust company who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered or certified mail or statutory overnight delivery to the secretary of the bank or trust company within 24 hours after the

adjournment of the meeting. Such right to dissent shall not apply to a director who, being present at the meeting, failed to vote against such action.

(c) A director shall not be liable under subsection (a) of this Code section if he relied and acted in good faith upon financial information of the bank or trust company represented to him to be correct by the president or the officer of the bank or trust company having charge of its books of account or stated in a written report by an independent or certified public accountant or firm of such accountants to reflect fairly the financial condition of such bank or trust company; nor shall he be so liable if in good faith in determining the amount available for any such dividend or distribution he considered the assets to be represented fairly on the books of the bank.

(d) Any director against whom any claim shall be asserted under or pursuant to this Code section for the payment of a dividend or other distribution of assets of a bank or trust company and who shall be held liable thereon shall be entitled to contribution from the shareholders who, knowing such dividend or distribution to have been made in violation of this chapter, accepted or received any such dividends or assets in proportion to the amounts received by them respectively.

(e) Any director against whom any claim shall be asserted under or pursuant to this Code section shall be entitled to contribution from the other directors who voted for or assented to the action upon which the claim is asserted.

(f) No liability under this Code section shall be asserted more than six years from the time the cause of action accrued.

(Code 1933, 41A-2215, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 2000, p. 1589, 3.)

PART 13

AMENDMENT OF ARTICLES

7-1-510. Authorized amendments; articles entirely restated; notice to Secretary of State.

(a) A bank or trust company may, in the manner provided in this part, amend its articles at any time in order to make any change therein which would then be authorized for inclusion in original articles under this chapter, including without limitation an amendment:

- (1) To adopt a new name permitted to be used under this chapter;
- (2) To renew the term for which it is to exist or to provide for perpetual duration;
- (3) To change, add to, or diminish the statement of its purpose or purposes;

(4) To increase or diminish the aggregate number of shares which it has authority to issue or to reclassify the shares by changing the number, par value, designations, preferences, redemption provisions, or relative, participating, optional, or other special rights of the shares or the qualifications, limitations, or restrictions of such rights, either with or without an increase or decrease in the number of shares;

(5) To restate the articles in their entirety;

(6) To change its main office location to a new location; or

(7) In the case of a bank, to become a trust company and, in the case of a trust company, to become a bank, with or without retaining an existing capacity to engage in the banking or trust business as the case may be.

(b) Articles restated in their entirety shall state the street address and county of the current instead of the original main office of the bank or trust company and need not state the names or other information concerning the first directors or the incorporators.

(c) Articles need not be amended for the addition or change of a registered agent or the change of a registered office. The bank or trust company shall, however, notify in writing the department and the Secretary of State of such changes.

(Ga. L. 1898, p. 78, 7; Ga. L. 1910, p. 98, 1; Civil Code 1910, 2821; Ga. L. 1917, p. 81, 1; Ga. L. 1919, p. 135, art. 9, 1; Ga. L. 1919, p. 135, art. 10, 1; Ga. L. 1920, p. 102, 1; Ga. L. 1927, p. 344, 5, 6; Code 1933, 13-1001, 13-1101, 109-301, 109-302, 109-401, 109-505; Ga. L. 1943, p. 249, 2; Ga. L. 1953, Jan.-Feb. Sess., p. 240, 1; Ga. L. 1964, p. 75, 1; Ga. L. 1965, p. 501, 2; Ga. L. 1966, p. 692, 28, 37; Ga. L. 1968, p. 1045, 2; Code 1933, 13-1201, enacted by Ga. L. 1969, p. 964, 1; Ga. L. 1972, p. 727, 4; Code 1933, 109-302.1, enacted by Ga. L. 1973, p. 525, 1; Code 1933, 41A-2301, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1989, p. 1257, 8; Ga. L. 1998, p. 795, 21; Ga. L. 1999, p. 674, 9.)

7-1-511. Proposal and adoption of amendments.

(a) An amendment of the articles shall be proposed by adoption of a resolution by the board of directors directing that it be submitted to a vote at a meeting of shareholders.

(b) The resolution proposing an amendment or amendments shall contain the language of each amendment by setting forth in full the articles as they would be amended or any provision thereof as it would be amended or by setting forth in full any matter to be added to or deleted from the articles. A copy of the resolution or a summary thereof shall be included with the notice of the meeting required under Code [Section 7-1-6](#).

(c) Except as provided in subsections (d) and (e) of this Code section, adoption of each amendment shall require the affirmative vote of the shareholders entitled to cast at least a majority of the votes which all shareholders are entitled to cast thereon and, if any class is

entitled to vote thereon as a class, of the holders of at least a majority of the outstanding shares of such class.

(d) If a proposed amendment would:

(1) Make any change in the preferences, redemption provisions, qualifications, limitations, restrictions, or special or relative rights of the shares of any class adverse to such class;

(2) Increase or decrease the par value of the shares of any class;

(3) Increase the authorized number of shares of any class;

(4) Limit or deny the existing preemptive rights of the shares of any class; or

(5) Authorize a new class of shares or increase the number of authorized shares of any class, senior or superior in any respect to the shares of any class previously authorized,

the holders of the outstanding shares of such class shall be entitled to vote as a class on such amendment regardless of any limitation stated in the articles on the voting rights of such class.

(e) Any amendment for the purposes set forth in paragraph (7) of subsection (a) of Code [Section 7-1-510](#) shall require for its adoption the affirmative vote of at least two-thirds of all the shares entitled to vote thereon or of each class entitled to vote thereon where voting by class is required.

(Ga. L. 1917, p. 81, 2; Ga. L. 1919, p. 135, art. 9, 1, 2; Ga. L. 1920, p. 102, 1; Ga. L. 1927, p. 344, 6; Code 1933, 13-1001, 13-1002, 13-2101, 109-402, 109-507; Ga. L. 1943, p. 249, 2; Ga. L. 1953, Jan.-Feb. Sess., p. 240, 1; Ga. L. 1957, p. 501, 1; Ga. L. 1963, p. 550, 1; Ga. L. 1965, p. 501, 2; Ga. L. 1966, p. 463, 2; Ga. L. 1966, p. 692, 29; Ga. L. 1968, p. 1045, 1, 2; Code 1933, 13-1201, enacted by Ga. L. 1969, p. 964, 1; Ga. L. 1972, p. 727, 3, 4; Code 1933, 41A-2302, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1999, p. 674, 10.)

7-1-512. Execution, contents, filing, and effect of articles of amendment.

(a) Upon the adoption of an amendment, articles of amendment shall be signed by two duly authorized officers of the bank or trust company under its seal and shall contain:

(1) The name of the bank or trust company;

(2) The street address and county of its main office;

(3) Whether it was incorporated with banking or trust powers or both;

(4) The time and place of the meeting of shareholders at which the shareholders approved the resolution of the board of directors, as originally proposed or as amended, and the kind and period of notice given to the shareholders;

(5) The number of shares entitled to vote on the amendment and, if the shares of any class are entitled to vote as a class, the number of shares of each such class;

(6) The number of shares voted for and against the amendment and, if shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the amendment; and

(7) The amendment adopted, which shall be set forth in full.

(b) The articles of amendment shall be filed with the department in triplicate together with:

(1) The fee required by Code [Section 7-1-862](#); and

(2) As soon as possible, a publisher's affidavit as proof of publication of the advertisement required by Code [Section 7-1-513](#).

(c) The filing of articles of amendment shall constitute an application for a certificate of amendment. If the articles of amendment involve a change in the name of a bank or trust company, it shall reserve the proposed new name under the procedures of Code [Section 7-1-131](#).

(Code 1933, 41A-2303, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1975, p. 445, 30; Ga. L. 1981, p. 1366, 15; Ga. L. 1983, p. 602, 13; Ga. L. 1989, p. 1257, 9; Ga. L. 1998, p. 795, 22.)

7-1-513. Certification of articles of amendment; delivery to bank or trust company; publication of notice.

When the articles of amendment are filed, the department shall certify one of the copies thereof and deliver the same to the bank or trust company. The bank or trust company shall cause to be published in a publication as specified in the rules, regulations, or written policies of the department a copy of the articles of amendment or, in lieu thereof, a statement in substantially the following form:

NOTICE OF AMENDMENT

An application for a certificate of amendment of its articles of incorporation has been made by (name of bank or trust company) by filing such application with the Department of Banking and Finance in accordance with the applicable provisions of [Chapter 1](#) of [Title 7](#) of the Official Code of Georgia Annotated, known as the "Financial Institutions Code of Georgia." The (purpose) (purposes) of said articles of amendment (is) (are) (state the purpose of each amendment affected by the articles of amendment).

The articles of amendment or the statement must be published once a week for two consecutive weeks with the first publication occurring within ten days of receipt by the newspaper of the articles of amendment or statement.

(Ga. L. 1919, p. 135, art. 9, 3, 4; Code 1933, 13-1003, 13-1004; Ga. L. 1966, p. 692, 30, 31; Code 1933, 41A-2304, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1975, p. 445, 31; Ga. L. 1989, p. 1257, 10; Ga. L. 1998, p. 795, 23.)

7-1-514. Approval or disapproval of articles of amendment.

(a) Upon receipt of the articles of amendment, the department shall conduct such investigation as it may deem necessary to determine:

(1) That the articles of amendment and supporting items satisfy the requirements of this chapter;

(2) Where the amendment would grant new powers or status to a bank or trust company, that the criteria for the granting of such powers or status as an original matter have been satisfied;

(3) Where the amendment decreases the capital stock of the institution, that the remaining capital stock will be adequate to support its anticipated banking or trust business;

(4) Where the amendment provides for a change to a new location, that the criteria for establishing a banking office at the new location have been satisfied; and

(5) That the interests of the shareholders, depositors, and the public will not be impaired by the amendment.

(b) Within 60 days after receipt of the articles of amendment, the department, in its discretion, shall approve or disapprove the articles of amendment on the basis of its investigation and criteria set forth in subsection (a) of this Code section. If the department shall approve the articles of amendment, it shall deliver its written approval to the Secretary of State with a copy of the amendment attached and notify the bank or trust company of its action. If the department shall disapprove the articles of amendment, it shall give written notice to the bank or trust company and shall furnish to the bank or trust company a statement generally setting out the unfavorable factors influencing its decision. The decision of the department shall be conclusive, except that it may be subject to judicial review as provided in Code [Section 7-1-90](#).

(Ga. L. 1919, p. 135, art. 9, 5; Code 1933, 13-1005; Ga. L. 1966, p. 590, 4; Ga. L. 1966, p. 692, 32; Ga. L. 1968, p. 1045, 4; Code 1933, 41A-2305, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1989, p. 1257, 11; Ga. L. 1999, p. 674, 11.)

7-1-515. Issuance of certificate of amendment.

If all the fees and charges required by law have been paid and, in the case of a change of name, if the proposed new name of the bank or trust company continues to be reserved or is available on the records of the Secretary of State, upon the receipt by the Secretary of State of the written approval of the department and of proof of publication of the amendments as required by Code [Section 7-1-513](#), the Secretary of State shall immediately issue to the bank or trust company a certificate of amendment and shall retain a copy thereof along with the approved articles of amendment, the written approval of the department, and the proof of publication.

(Ga. L. 1919, p. 135, art. 9, 7; Code 1933, 13-1007; Ga. L. 1966, p. 692, 34; Code 1933, 41A-2306, enacted by Ga. L. 1974, p. 705, 1.)

7-1-516. Effect of certificate of amendment.

(a) As of the issuance of the certificate of amendment by the Secretary of State, each amendment shall become effective and the articles shall be deemed to be amended accordingly.

(b) The certificate of amendment shall be conclusive evidence of the performance of all conditions required by this chapter for amendment of articles, except as against the state.

(c) No amendment shall affect any existing cause of action in favor of or against the bank or trust company, any pending action in which the bank or trust company is a party, or existing rights of persons other than shareholders. If the amendment changes the name of the bank or trust company, no action by or against the institution shall be abated for that reason.

(Code 1933, 41A-2307, enacted by Ga. L. 1974, p. 705, 1.)

PART 14

MERGER AND CONSOLIDATION OF STATE BANKS AND TRUST COMPANIES

7-1-530. Authority to merge or consolidate; merger, consolidation, or share exchange across state lines; required provisions of the merger plan.

(a) Upon compliance with the requirements of this part and other applicable laws and regulations, including any branching and minimum age laws and regulations, one or more banks or trust companies may merge or consolidate, provided that an institution exercising trust powers alone may merge or consolidate only with another such trust company. Upon compliance with the requirements of this part and other applicable laws and regulations, including any branching and minimum age laws and regulations, a corporation other than a bank or trust company may acquire all of the outstanding shares of one or more classes or series of one or more banks or trust companies through a share exchange.

(b) A corporation other than a bank or trust company may be merged into or consolidated with, or may enter into a share exchange with, a bank or trust company, provided that:

(1) The resulting institution of the merger or consolidation is a bank or trust company;

(2) The resulting institution of the merger or consolidation, or the acquired bank or trust company in a share exchange, holds only assets and liabilities and is engaged only in activities which may be held or engaged in by a bank or trust company; and

(3) The merger, share exchange, or consolidation is not otherwise unlawful.

(c) A merger, share exchange, or consolidation pursuant to subsection (b) of this Code section shall be made by compliance with the requirements of this part. [Title 14](#) shall not be applicable to such a merger, share exchange, or consolidation.

(d) A merger, share exchange, or consolidation across state lines involving one or more banks or trust companies shall also be subject to the provisions of Part 20 of this article.

(e) In the case of a merger of a Georgia state bank with any other bank or banks, with the Georgia bank as the resulting bank, any assets, lines of business, activities, or powers which may accrue to the resulting bank which would not be allowed for a Georgia state bank shall be provided for in the plan of merger. Such plan shall include the proposal for holding or disposal of such assets or the continuation or termination of such line of business, activity, or power. The department shall review the plan to determine whether, in the interest of safety and soundness and consistent with the other objectives of Code [Section 7-1-3](#), the activity, power, asset, or line of business should be approved, denied, or phased out within a reasonable period of time, to be determined by the department.

(f) As used in this part, the term "share exchange" means a plan of exchange of all of the outstanding shares of one or more classes or series of shares in accordance with this part.

(g) Subject to the provisions of this part, this Code section does not limit the power of a corporation other than a bank or trust company to acquire all or part of the shares of one or more classes or series of a bank or trust company through a voluntary exchange of shares or otherwise.

(Ga. L. 1919, p. 135, art. 13, 1; Code 1933, 13-1401; Ga. L. 1973, p. 278, 1; Code 1933, 41A-2401, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1996, p. 848, 8; Ga. L. 1997, p. 485, 17; Ga. L. 2000, p. 174, 11; Ga. L. 2001, p. 970, 5; Ga. L. 2003, p. 843, 6; Ga. L. 2007, p. 502, 4/SB 70.)

7-1-531. Requirements for merger, share exchange, or consolidation plan; modification of plan.

(a) The requirements for a merger, share exchange, or consolidation which must be satisfied by the parties thereto are as follows:

(1) The parties shall adopt a plan stating the method, terms, and conditions of the merger, share exchange, or consolidation, including the rights under the plan of the shareholders of each of the parties and any agreement concerning the merger, share exchange, or consolidation. Said plan shall specify:

(A) The name that such bank or trust company shall have upon and after such merger, share exchange, or consolidation, which may be the name of any one of the institutions or the combined names of two or more of the institutions or such other name as stated;

(B) The persons who shall constitute the board of directors of the bank or trust company after the merger, share exchange, or consolidation;

(C) In the case of a merger or consolidation, the manner and basis of converting the shares of each merged or consolidated institution into shares or other securities or obligations of the surviving bank or trust company and, if any shares of any of the merged or consolidated institutions are not to be converted solely into shares or other securities of the surviving bank or trust company, the amount of cash or securities of any other corporation, or combination of cash and such securities, which is to be paid or delivered to the holders of such shares in exchange for or upon the surrender of such shares, which cash or securities may be in addition to or in lieu of the shares or other securities of the surviving bank or trust company;

(D) In the case of a share exchange, the terms and conditions of the share exchange and the manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or in part; and

(E) Such other provisions with respect to the proposed merger or consolidation as are deemed desirable.

(2) Adoption of the plan by each party thereto shall require the affirmative vote of at least:

(A) A majority of the directors; and

(B) The shareholders entitled to cast two-thirds of the votes which all shareholders are entitled to cast thereon and, if any class of shares is entitled to vote thereon as a class, the holders of at least two-thirds of the outstanding shares of such class, at a meeting of shareholders.

(3) The notice shall include a copy or summary of the plan and a full statement of the rights and remedies of dissenting shareholders, the method of exercising them, and the limitations on such rights and remedies.

(b) Any modification of a plan which has been adopted shall be made by any method provided therein or, in the absence of such provision, by the same vote as that required for adoption.

(Ga. L. 1919, p. 135, art. 13, 1, 2; Code 1933, 13-1401, 13-1402; Ga. L. 1973, p. 278, 1; Code 1933, 41A-2402, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 2007, p. 502, 5/SB 70.)

7-1-532. Execution, contents, and filing of articles of merger, share exchange, or consolidation; notice; filing amendment.

(a) Upon adoption of the plan of merger, share exchange, or consolidation as provided in Code [Section 7-1-531](#), the parties to the merger, share exchange, or consolidation shall file in duplicate with the department articles of a merger, share exchange, or consolidation as required by this Code section, together with the fee required by Code [Section 7-1-862](#).

(b) The articles of merger, share exchange, or consolidation shall be signed by two duly authorized officers of each party to the plan under their respective seals and shall contain:

(1) The names of the parties to the plan and of the resulting bank or trust company or the acquiring corporation in a share exchange;

(2) The street address and county of the location of the main office and registered agent and registered office of each;

(3) The votes by which the plan was adopted and the time, place, and notice of each meeting in connection with such adoption;

(4) The names and addresses of the first directors of the resulting bank or trust company or the directors of the acquired corporation in a share exchange;

(5) In the case of a merger, any amendment of the articles of the resulting bank or trust company;

(6) In the case of a consolidation, the provisions required in articles of a new bank or trust company by paragraphs (4), (5), (6), (7), and (10) of subsection (a) of Code [Section 7-1-392](#); and

(7) The plan.

(c) Together with the articles of merger, share exchange, or consolidation, the parties shall deliver to the department a copy of the notice of merger, share exchange, or consolidation and an undertaking, which may appear in the articles of merger, share exchange, or consolidation or be set forth in a letter or other instrument executed by an officer or any person authorized to act on behalf of such bank or trust company, that the request for publication of a notice of filing the articles of merger, share exchange, or consolidation and payment therefor will be made as required by subsection (d) of this Code section.

(d) No later than the next business day after filing the articles of merger, share exchange, or consolidation with the department, the parties shall mail or deliver to the publisher of a

newspaper which is the official organ of the county where the main office of each party is located a notice which shall contain a statement that the articles of merger, share exchange, or consolidation have been filed with the department, the names of the institutions which are parties to the proposed merger, share exchange, or consolidation, and in the case of a merger the proposed name of the surviving bank or trust company, and shall designate a place where a copy of the articles of merger, share exchange, or consolidation may be examined. Subsections (b) and (c) of Code [Section 7-1-7](#) shall also apply to the notice.

(e) The request for publication of the notice shall be accompanied by a check, draft, or money order in the proper amount in payment of the cost of publication. The notice shall be published once a week for two consecutive weeks commencing within ten days after receipt of the notice by the newspaper.

(f) In the event the plan is amended as provided in Code [Section 7-1-531](#), the parties shall promptly file in duplicate with the department an amendment to the articles of consolidation, share exchange, or merger reflecting such amendment of the plan.

(Ga. L. 1922, p. 63, 1; Code 1933, 13-1403; Ga. L. 1972, p. 727, 7; Code 1933, 41A-2403, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1989, p. 1257, 12; Ga. L. 1995, p. 673, 19; Ga. L. 1998, p. 795, 24; Ga. L. 1999, p. 81, 7; Ga. L. 1999, p. 674, 12; Ga. L. 2007, p. 502, 6/SB 70.)

7-1-533. Additional filings with department.

The parties to the plan shall also file with the department:

(1) An application and information desired by the department in order to evaluate the proposed merger, share exchange, or consolidation, which shall be made available in the form specified by the department;

(2) Applicable fees established by regulation of the department to defray the expenses of the investigation required by Code [Section 7-1-534](#); and

(3) If the merger, share exchange, or consolidation involves the adoption of a new name, a certificate of the Secretary of State reserving said name under Code [Section 7-1-131](#).

(Ga. L. 1919, p. 135, art. 13, 2, 3; Code 1933, 13-1404; Code 1933, 41A-2404, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1978, p. 1717, 6; Ga. L. 1989, p. 1257, 13; Ga. L. 1995, p. 673, 20; Ga. L. 2007, p. 502, 7/SB 70.)

7-1-534. Approval or disapproval by department.

(a) Upon receipt of the articles of consolidation, share exchange, or merger and the filings required by Code [Section 7-1-533](#), the department shall conduct such investigation as it may deem necessary to ascertain whether:

(1) The articles of merger, share exchange, or consolidation and supporting items satisfy the requirements of this chapter;

(2) The plan and any modification thereof adequately protect the interests of depositors, other creditors, and shareholders;

(3) The requirements for a merger, share exchange, or consolidation under all applicable laws have been satisfied and the resulting bank or trust company or the acquired bank or trust company in a share exchange would satisfy the requirements of this chapter applicable to it; and

(4) The merger, share exchange, or consolidation would be consistent with adequate and sound banking or fiduciary practice and in the public interest on the basis of:

(A) The financial history and condition of the parties to the plan;

(B) Their prospects;

(C) The character of their management; and

(D) The convenience and needs of the area primarily to be served by the resulting institution, or by the acquiring corporation and the acquired bank or trust company in a share exchange.

(b) Within 90 days after receipt of the articles of merger, share exchange, or consolidation, the notice of merger or share exchange, and the filings required by Code [Section 7-1-533](#), or within an additional period of not more than 30 days after an amendment to the application is received within the initial 90 day period, the department shall, in its discretion, approve or disapprove the articles on the basis of its investigation and the criteria set forth in subsection (a) of this Code section. Except as provided in Code [Section 7-1-535](#), the department shall give the Secretary of State written notice of its approval with a copy of the articles of merger, share exchange, or consolidation and a copy of the notice of merger or share exchange attached. The department shall also give the parties to the plan written notice of its decision and, in the event of disapproval, a statement in general of the reasons for its decision. The decision of the department shall be conclusive, except that it may be subject to judicial review as provided in Code [Section 7-1-90](#).

(Code 1933, 41A-2405, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1989, p. 1257, 14; Ga. L. 1995, p. 673, 21; Ga. L. 1996, p. 6, 7; Ga. L. 2007, p. 502, 8/SB 70.)

7-1-535. Procedure after approval by department; federal approval or disapproval; issuance of certificate of merger, share exchange, or consolidation.

(a) If the laws of the United States require the approval of the merger, share exchange, or consolidation by any federal agency, the department may, at its option, after its approval, retain its notice to the Secretary of State until it receives notice of the decision of such agency. If such

agency shall refuse to give its approval, the department may, at its option, notify the parties to the plan that the department's approval has been rescinded for that reason. If such agency gives its approval, the department shall deliver its written approval to the Secretary of State for issuance of a certificate of merger, share exchange, or consolidation by the Secretary of State and shall notify the parties to the plan.

(b) If all the taxes, fees, and charges required by law shall have been paid and if the name of the resulting bank or trust company in a merger or consolidation continues to be reserved or is available on the records of the Secretary of State, upon receipt of the written approval of the department, the Secretary of State shall issue to the resulting bank or trust company or the acquiring corporation in a share exchange a certificate of merger, share exchange, or consolidation with the approved articles of merger or consolidation attached thereto and shall retain a copy of such certificate, articles, and approval by the department.

(Ga. L. 1922, p. 63, 1; Code 1933, 13-1403; Ga. L. 1972, p. 727, 7; Code 1933, 41A-2406, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1978, p. 1717, 7; Ga. L. 2007, p. 502, 9/SB 70.)

7-1-536. Effect of merger, share exchange, or consolidation.

(a) As of the issuance of the certificate of merger, share exchange, or consolidation by the Secretary of State, the merger, share exchange, or consolidation shall be effective.

(b) The certificate of merger, share exchange, or consolidation shall be conclusive evidence of the performance of all conditions precedent to the merger, share exchange, or consolidation and of the existence or creation of the bank or trust institution, except as against the state.

(c) When a merger or consolidation becomes effective, each party to the plan, except the resulting bank or trust company, shall cease to exist as a separate entity but shall continue in, and the parties to the plan shall be, a single corporation which shall be the bank or trust company and which shall have, without further act or deed, all the property, rights, powers, trusts, duties, and obligations of each party to the plan. When a share exchange becomes effective, the shares of each acquired bank or trust company are exchanged as provided in the plan, and the former holders of the shares are entitled only to the share exchange rights provided in the plan of share exchange or to their rights under Code [Section 7-1-537](#).

(d) The articles of the resulting bank or trust company shall be, in the case of a merger, the same as its articles prior to the merger with any change stated in the articles of merger or, in the case of a consolidation, the provisions stated in the articles of consolidation.

(e) The resulting bank or trust company, or the acquired bank or trust company in a share exchange, shall have the authority to engage only in such business and exercise only such powers as are then permissible upon original incorporation under this chapter and shall be subject to the same prohibitions and limitations as it would then be subject to upon original incorporation. It may, however, subject to permission of the department as set out in Code [Sections 7-1-530](#) and [7-1-555](#), engage in any business and exercise any right that any bank or trust company which is a

party to the plan could lawfully exercise or engage in immediately prior to the merger, share exchange, or consolidation.

(f) No liability of any party to the plan or of its shareholders, directors, or officers shall be affected nor shall any lien on any property of a party to the plan be impaired by the merger, share exchange, or consolidation. Any claim existing or action pending by or against any party to the plan may be prosecuted to judgment as if the merger, share exchange, or consolidation had not taken place or the resulting bank or trust company may be substituted in its place.

(Ga. L. 1919, p. 135, art. 13, 5; Code 1933, 13-1406, 13-1407; Code 1933, 41A-2407, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 2001, p. 970, 6; Ga. L. 2007, p. 502, 10/SB 70.)

7-1-537. Rights of dissenting shareholders; surrender of certificates.

(a) A shareholder of a bank or trust company which is a party to a plan of proposed merger, share exchange, or consolidation under this part who objects to the plan shall be entitled to the rights and remedies of a dissenting shareholder as determined under [Chapter 2 of Title 14](#), known as the "Georgia Business Corporation Code."

(b) The bank or trust company into which the other or others have been merged or consolidated, or the acquiring corporation in a share exchange, as the case may be, shall have the right to require the return of the original certificates of stock held by each shareholder in each or either of the institutions and in lieu thereof:

(1) To issue to each shareholder new certificates for such number of shares of the institution into which the others shall have been merged or consolidated or of the acquiring corporation in a share exchange; or

(2) To cause to be paid or delivered to each shareholder the amount of cash or securities of any other corporation or combination of cash and such securities as, under the plan of merger, share exchange, or consolidation, the said shareholder may be entitled to receive.

(Ga. L. 1919, p. 135, art. 13, 4, 6; Code 1933, 13-1405; Ga. L. 1973, p. 278, 2; Code 1933, 41A-2408, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1989, p. 946, 68; Ga. L. 1989, p. 1257, 15; Ga. L. 2007, p. 502, 11/SB 70.)

PART 15

CONVERSIONS, MERGERS, AND CONSOLIDATIONS INVOLVING NATIONAL BANKS

7-1-550. Authority for national bank or federal savings bank to state bank or trust company conversions, mergers, and consolidations; conversion, merger, or consolidation across state lines; conversion of federal savings bank to state bank.

(a) Subject to this part and any applicable branching law or regulation, a national bank located in this state may convert into, or merge or consolidate with, a bank or trust company upon:

(1) Compliance with the applicable laws of the United States, including any provisions thereof relating to approval of said conversion, merger, or consolidation by the shareholders and directors of the national bank and to dissenting rights of shareholders in such national bank, and compliance with any other requirements prescribed by the department to protect the shareholders or members or the safety and soundness of the institution;

(2) Adoption of any plan of merger or consolidation by the directors and shareholders of any party thereto existing under the laws of this state as required by paragraph (2) of subsection (a) of Code [Section 7-1-531](#);

(3) Approval of the conversion, merger, or consolidation by the department as provided in this part; and

(4) Issuance of the appropriate certificate by the Secretary of State as provided in this part.

(b) A conversion, merger, or consolidation across state lines of any one or more national banks with a bank or trust company shall also be subject to the provisions of Part 20 of this article.

(c) A federal savings bank located in this state may apply to the department to convert to a state charter. The provisions of Code [Section 7-1-293](#) shall apply to the resulting bank, and the conversion procedure shall be the same as for national bank conversions.

(Ga. L. 1953, Jan.-Feb. Sess., p. 73, 3, 4; Code 1933, 41A-2501, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1982, p. 3, 7; Ga. L. 1996, p. 848, 9; Ga. L. 1997, p. 485, 18; Ga. L. 1999, p. 674, 13; Ga. L. 2005, p. 826, 10/SB 82.)

7-1-551. National bank to state bank or trust company conversions, mergers, and consolidations - Articles of conversion, merger, or consolidation.

(a) The party or parties desiring to consummate a conversion, merger, or consolidation authorized by Code [Section 7-1-550](#) shall, upon requisite approval of the plan by their directors and shareholders, file with the department, in triplicate, articles of conversion, merger, or consolidation, together with the fee required by Code [Section 7-1-862](#).

(b) The articles of conversion shall be signed by two duly authorized officers of the national bank under its seal and shall contain:

(1) Its name and the name of the resulting bank or trust company;

- (2) The street address and county of its main office;
 - (3) The name and initial registered agent and the street address where the initial registered office will be located;
 - (4) The votes by which the plan of conversion was adopted and the time, place, and notice of each meeting in connection with such adoption;
 - (5) The names and addresses of the first directors of the resulting bank or trust company;
 - (6) The provisions required in articles of a new bank or trust company by paragraphs (5), (6), (7), and (10) of subsection (a) of Code [Section 7-1-392](#); and
 - (7) The plan of conversion.
- (c) The articles of merger or consolidation shall be in the form specified by subsection (b) of Code [Section 7-1-532](#).

(Ga. L. 1953, Jan.-Feb. Sess., p. 73, 5, 6; Code 1933, 41A-2502, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1989, p. 1257, 16; Ga. L. 1999, p. 81, 7; Ga. L. 1999, p. 674, 14.)

7-1-552. National bank to state bank or trust company conversions, mergers, and consolidations - Filings with department; publication of notice.

- (a) In the case of a merger or consolidation, the parties shall make the filings and publication required by Code [Sections 7-1-532](#) and [7-1-533](#).
- (b) In the case of a conversion, the national bank shall also file with the department:
- (1) Information desired by the department in order to evaluate the proposed conversion, in the form specified by the department;
 - (2) Applicable fees established by regulation of the department to defray the expenses of its investigation under Code [Section 7-1-553](#); and
 - (3) A certificate of the Secretary of State showing that the proposed name of the resulting bank or trust company has been reserved under Code [Section 7-1-131](#).
- (c) In the case of a conversion, the national bank shall publish, in the manner prescribed by Code [Section 7-1-532](#), a notice of the proposed conversion, setting forth its name and the name it proposes to use as a bank or trust company and designating the place where a copy of the plan of conversion may be examined. The notice shall be published in the county of the main office of the national bank.

(Ga. L. 1953, Jan.-Feb. Sess., p. 73, 9; Code 1933, 41A-2503, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1995, p. 673, 22.)

7-1-553. National bank to state bank or trust company conversions, mergers, and consolidations - Approval or disapproval by department; federal approval or disapproval.

(a) The department shall conduct such investigation as it may deem necessary to ascertain whether:

(1) In the case of a conversion:

(A) The articles of conversion and supporting items satisfy the requirements of this chapter;

(B) The plan adequately protects the interests of depositors, other than creditors and shareholders; and

(C) The requirements for a conversion under all applicable laws have been satisfied and the resulting institution would satisfy the requirements of this chapter applicable to it; and

(2) In the case of a merger or consolidation, the criteria stated in subsection (a) of Code [Section 7-1-534](#) are satisfied.

(b) Within 90 days after receipt of the articles and the filings required by Code [Section 7-1-552](#), the department shall, in its discretion, approve or disapprove the articles on the basis of its investigation and the criteria set forth in subsection (a) of this Code section. If the department shall approve the articles, it shall deliver its written approval with a copy of the articles attached to the Secretary of State and notify the national bank, and any other parties to the plan, of its action, provided that, if approval of any federal agency is required, the department may withhold, at its option, its approval from the Secretary of State until such federal approval is given. If required federal approval is not given, the department may, at its option, withdraw its approval for this reason. If the department shall disapprove, at its option, the application, it shall give written notice to the national bank and any other parties to the plan of its disapproval and a statement to them generally of the reasons for its decision. The decision of the department shall be conclusive, except that it may be subject to judicial review under Code [Section 7-1-90](#).

(Code 1933, 41A-2504, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1977, p. 730, 8; Ga. L. 1989, p. 1257, 17.)

7-1-554. National bank to state bank or trust company conversions, mergers, and consolidations - Issuance of certificate of conversion, consolidation, or merger.

If all the taxes, fees, and charges required by law shall have been paid and if the name of the resulting bank or trust company continues to be reserved or is available on the records of the

Secretary of State, upon the receipt of the written approval of the department, the Secretary of State shall immediately issue to the resulting bank or trust company a certificate of conversion, consolidation, or merger and shall retain a copy of such certificate, the articles, and the approval from the department.

(Ga. L. 1953, Jan.-Feb. Sess., p. 73, 6; Ga. L. 1972, p. 727, 6; Code 1933, 41A-2505, enacted by Ga. L. 1974, p. 705, 1.)

7-1-555. National bank to state bank or trust company conversions, mergers, and consolidations - Effect of issuance of certificate.

(a) Issuance of a certificate of merger or consolidation shall have the same effect stated in Code [Section 7-1-536](#).

(b) Issuance of a certificate of conversion shall have the following effect:

(1) As of the issuance of the certificate of conversion by the Secretary of State, the conversion shall become effective;

(2) The certificate of conversion shall be conclusive evidence of the performance of all conditions required by this chapter for conversion of a national bank into a state bank or trust company, except as against the state;

(3) When a conversion becomes effective, the existence of the national bank shall continue in the resulting bank or trust company which shall have (except as provided in paragraph (2) of this subsection), without further act or deed, all the property, rights, powers, trusts, duties, and obligations of the national bank;

(4) The articles of the resulting institution shall be the provisions stated in the articles of conversion;

(5) The bank or trust company shall have the authority to engage only in such lines of business and activities and exercise only such powers or hold such assets as are then permissible upon original incorporation under this chapter and shall be subject to the same prohibitions and limitations as it would then be subject to upon original incorporation; provided, however, that if the converting institution owns or holds assets, engages in any business, or has powers that would not be allowed for a state bank, then the plan of conversion shall include a plan for holding or disposal of such nonconforming assets or the continuation or termination of such line of business, activity, or power. The department shall review the plan to determine whether, in the interest of safety and soundness and the other objectives of Code [Section 7-1-3](#), the activity, power, asset, or line of business should be approved, denied, or phased out within a reasonable period of time, to be determined by the department; and

(6) No liability of the national bank or of its shareholders, directors, or officers shall be affected, nor shall any lien on any property of the national bank be impaired, by the conversion.

Any claim existing or action pending by or against the national bank may be prosecuted to judgment as if the conversion had not taken place, or the resulting bank or trust company may be substituted in its place.

(Ga. L. 1953, Jan.-Feb. Sess., p. 73, 7, 12; Code 1933, 41A-2506, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1998, p. 795, 25; Ga. L. 2000, p. 174, 12; Ga. L. 2001, p. 970, 7.)

7-1-556. State bank or trust company to national bank or federal savings institution conversions, mergers, or consolidations.

(a) A bank or trust company may convert into, or merge or consolidate with, a national bank or a federal savings institution upon:

(1) Authorization by and compliance with the laws of the United States; and

(2) Adoption of a plan of conversion, merger, or consolidation by the affirmative vote of at least:

(A) A majority of its directors; and

(B) The holders of two-thirds of each class of its shares at a meeting held upon not less than ten days' notice to all shareholders.

(b) A state bank or trust company which converts into or merges or consolidates with a national bank or a federal savings institution shall:

(1) Notify the department of the proposed conversion, merger, or consolidation;

(2) Provide such evidence of the adoption of the plan of conversion, merger, or consolidation as the department may request;

(3) Notify the department of any abandonment or disapproval of the plan; and

(4) File with the department and with the Secretary of State a certificate of the approval of the conversion, merger, or consolidation by the appropriate federal regulator.

(c) Conversion, merger, or consolidation of a state institution into a national banking association or a federal savings institution shall be effective upon completion of the requirements in subsection (b) of this Code section, and its articles as an institution existing under the laws of this state shall be automatically terminated.

(Code 1933, 13-1305, 13-1306, 13-1307, 13-1308, 13-1309, enacted by Ga. L. 1949, p. 536, 1; Ga. L. 1953, Jan.-Feb. Sess., p. 67, 1; Code 1933, 41A-2507, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1999, p. 674, 15.)

7-1-557. Merger, consolidation, or share exchange of nonbank corporations into national banks.

A national bank located in this state may merge or consolidate with, or enter into a share exchange with, a corporation other than a bank or trust company, provided that:

(1) Such merger, share exchange, or consolidation is permitted by the laws of the United States and such laws are complied with;

(2) The laws governing the merger, share exchange, or consolidation of such corporation are complied with;

(3) The resulting institution of the merger or consolidation, or the acquired bank in a share exchange, is a national bank;

(4) The resulting institution of the merger or consolidation, or the acquired bank in a share exchange, holds only assets and liabilities and engages only in activities which may be held or engaged in by a national bank located in this state; and

(5) The merger, share exchange, or consolidation is not otherwise unlawful.

(Code 1933, 41A-2508, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 2007, p. 502, 12/SB 70.)

PART 16

SALE AND OTHER DISPOSITION OF ASSETS

7-1-570. Secured transactions and other dispositions of assets not requiring shareholder approval.

(a) Unless the articles or bylaws otherwise provide, the board of directors may authorize any of the following transactions without any vote or consent of the shareholders:

(1) Any mortgage or pledge of, or creation of a security interest in, or conveyance of title to, all or any part of the property and assets of the bank or trust company of any description, or any interest therein, for the purpose of securing the payment or performance of any contract, note, bond, or other obligation of the bank or trust company; or

(2) Any sale, lease, exchange, or other disposition of less than substantially all the property and assets of the bank or trust company.

(b) Any transaction made as permitted by this Code section without any vote or consent of the shareholders may be upon such terms and conditions and for such consideration as the board may deem to be in the best interests of the bank or trust company.

(Code 1933, 41A-2601, enacted by Ga. L. 1974, p. 705, 1.)

7-1-571. Sale, lease, exchange, or other disposition of assets requiring shareholder approval.

A sale, lease, exchange, or other disposition of all, or substantially all, the property and assets, with or without the good will, of a bank or trust company, in all cases other than those dealt with in Code [Section 7-1-570](#), regarding secured transactions, may be made upon such terms and conditions which are otherwise legal and which shall be authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending such sale, lease, exchange, or other disposition, specifying, to the extent that the board sees fit, any or all of the terms and conditions thereof and the consideration to be received by the bank or trust company therefor and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting;

(2) Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, in the manner provided in Code [Section 7-1-6](#), and, whether the meeting is an annual or a special meeting, shall state that the purpose, or one of the purposes, is to consider the proposed sale, lease, exchange, or other disposition. The notice shall fairly summarize the material features of the proposed transaction and shall contain, where applicable, a clear and concise statement that, if the sale, lease, exchange, or other disposition is effected, shareholders may claim the rights of dissenting shareholders under this chapter;

(3) At such meeting the shareholders may authorize such sale, lease, exchange, or other disposition and may approve or fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the bank or trust company therefor. Such authorization shall require the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event such authorization shall require the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. Any class of shares shall be entitled to vote as a class if the resolution proposing the sale, lease, exchange, or other disposition contains any provision which, if contained in a proposed amendment to the articles, would entitle such class of shares to vote as a class;

(4) If the shareholders approve the proposed sale or other disposition, the bank or trust company shall make application to the department for approval thereof in such form as may be specified by the department. The department shall, in its discretion, approve the sale or other disposition if the proposal is in conformity with law and if the interests of the public, depositors, trust beneficiaries, and other creditors of the bank or trust company are adequately protected;

(5) After such authorization by a vote of shareholders and by the department, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders;

(6) In the case of a sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of a bank or trust company, a notice shall be published in each county in which the bank or trust company has an office engaged in the banking or trust business in the manner prescribed by subsection (c) of Code [Section 7-1-552](#).

(Code 1933, 41A-2602, enacted by Ga. L. 1974, p. 705, 1.)

7-1-572. Right of shareholder to dissent.

A shareholder of a bank or trust company shall have the right to dissent from any sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of a bank or trust company pursuant to Code [Section 7-1-571](#), except for a sale wholly for cash where the shareholders' approval thereof is conditional upon the distribution of all, or substantially all, of the net proceeds of the sale to the shareholders in accordance with their respective interests within one year after the date of the sale. The shareholders' right of dissent shall be exercised as provided in [Chapter 2](#) of [Title 14](#), known as the "Georgia Business Corporation Code."

(Code 1933, 41A-2603, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1989, p. 946, 69; Ga. L. 1989, p. 1257, 18.)

PART 17

REPRESENTATIVE OFFICES AND REGISTRATION

7-1-590. Definitions.

As used in this part, the term:

(1) "Bank" and "bank holding company" shall have the same meaning as in Part 18 of this article. A "banking business" is the business which a bank is authorized to do pursuant to this title. The power to receive deposits or the performance of any transaction directly or through an affiliate or agent relative to a deposit account shall be presumed to constitute a banking business.

(2) "Domicile" means the home state as defined in paragraph (12) of Code [Section 7-1-621](#) where a bank is chartered or where a bank holding company is incorporated.

(3) "Loan production office" is a form of a representative office, where the solicitation of loans or of leases of personal property may occur, but not the disbursement of loan proceeds nor any other banking business. It shall be established and registered as a representative office.

(4) "Representative office" is an office established by a bank, a bank holding company, or an agent or subsidiary of either for the purpose of conducting other than a banking business. It shall not be considered to be a branch office or main office.

(5) "Trust production office" means a trust sales office of a qualifying individual or corporate fiduciary which office is not performing fiduciary activities. The trust institution desiring to establish such an office in this state must apply to the department on forms provided by the department, must be approved by the commissioner to engage in sales activities in this state, and must register and pay any fees required for a representative office under Code [Section 7-1-593](#). Sales activities shall consist primarily of marketing or soliciting in this state using mail, telephone, or electronic means or in person to act or propose to act as a fiduciary outside of this state. The department shall be permitted to examine such trust production offices to ascertain whether they are limiting their activities as prescribed.

(Code 1981, 7-1-590, enacted by Ga. L. 1995, p. 673, 23; Ga. L. 1997, p. 485, 19; Ga. L. 1999, p. 674, 16.)

7-1-591. Establishment of representative office by bank or bank holding company domiciled in state.

A bank domiciled in this state and operating under its laws or the laws of the United States or a subsidiary or agent of such bank may establish a representative office anywhere in the state. A bank holding company domiciled in this state and operating under its laws or the laws of the United States or a nonbank subsidiary or agent of such bank holding company may establish a representative office anywhere in this state.

(Code 1981, 7-1-591, enacted by Ga. L. 1995, p. 673, 23; Ga. L. 1999, p. 674, 16.)

7-1-592. Establishment of representative office by bank or holding company domiciled outside of state.

A bank or bank holding company domiciled outside this state and operating under the laws of such other state or territory or of the United States, or its subsidiary or agent, may establish representative offices anywhere in this state.

(Code 1981, 7-1-592, enacted by Ga. L. 1995, p. 673, 23; Ga. L. 1999, p. 674, 16.)

7-1-593. Registration of bank or bank holding company having representative office in state.

(a) A bank or bank holding company having a representative office located in this state shall register with the department annually on forms prescribed by the department. Such registration shall be filed according to regulations issued by the department, shall be accompanied by a registration fee prescribed by regulations of the department, and shall list the names of all its Georgia representative offices, the street address of the offices, the nature of the business to be transacted in or through the offices, and such other information as the department may require. The department may consolidate these requirements and those for agency relationships with the holding company registration required in Parts 18, 19, and 20 of this article.

(b) The department may review the operations of any representative office annually or at such greater frequency as it deems necessary to assure that the office does not transact a banking business.

(Code 1981, 7-1-593, enacted by Ga. L. 1995, p. 673, 23; Ga. L. 1999, p. 674, 16.)

7-1-594. Registration of banks or bank holding companies conducting agency relationships.

(a) Banks or bank holding companies which are conducting agency relationships must register with the department to ensure the orderly and safe transaction of the banking business and to protect the interest of the state's depositors and creditors. Each such bank or bank holding company shall register with the department on forms prescribed by the department, shall file according to regulations issued by the department, may be subject to a registration fee prescribed by regulations of the department, and shall provide the name of the agent, the street address and activities of the agent, a copy of the agency agreement, and such other information as the department may require.

(b) An agency relationship as defined in paragraph (1.5) of Code [Section 7-1-4](#) must be on terms consistent with safe and sound banking practices and protection of the consumers of this state. The department may review and, where lawful, regulate the operations of any agency relationship to ensure such compliance. An agency relationship must be reflected in a written agreement which provides for orderly resolution of customer complaints, record keeping, liability of the respective parties in the agency relationship, conformity to applicable principal-agent, banking, and other state law, and disclosure to the customer of all pertinent information.

(Code 1981, 7-1-594, enacted by Ga. L. 1995, p. 673, 23.)

PART 18

BANK BRANCHES, OFFICES, FACILITIES, AND HOLDING COMPANIES

7-1-600. Definitions.

As used in this part, the term:

(1) "Bank" means any moneyed corporation authorized by law to receive deposits of money and commercial paper, to make loans, to discount bills, notes, and other commercial paper, to buy and sell bills of exchange, and to issue bills, notes, acceptances, or other evidences of debt, and shall include incorporated banks, savings banks, banking companies, trust companies, and other corporations doing a banking business and may include corporations who provide some or all of the financial services listed in this paragraph by technological means in lieu of or in addition to traditional geographically based delivery systems but, unless the context otherwise indicates, shall not include national banks or building and loan associations or similar associations or corporations; provided, however, that Code [Sections 7-1-590 through 7-1-594](#), providing for the registration of representative offices; Code [Sections 7-1-601 and 7-1-602](#), regulating the operation and establishment of bank branch offices; Code [Section 7-1-603](#), regulating the expansion of existing facilities; and Code [Sections 7-1-604 through 7-1-608](#), restricting the acquisition and ownership of bank shares or assets and regulating the operation of banks and bank holding companies in this state, shall apply to national banks and all other persons, corporations, or associations, by whatever authority organized, doing a banking or trust business in this state. "Bank" shall include "main office" and any "branch office," unless the context indicates that it does not.

(2) "Bank holding company" means "bank holding company" as defined in Code [Section 7-1-605](#).

(3) "Banking office" or "banking location" means either a main office or a branch office.

(4) "Banking services" shall include all those offerings or services resulting from the exercise of banking powers as granted to banks in this title or by other applicable federal or state law or regulation.

(5) "Branch office" means any location of a bank other than the main office where banking services are offered to the public. It does not include a representative office as defined in Code [Section 7-1-590](#) or a bank extension as defined in Code [Section 7-1-603](#). The department may provide by regulation that certain other activities do or do not constitute the formation of a branch office.

(6) "Main office" means the principal banking location of a bank as such location appears in the records of the department. A bank shall indicate its principal banking location with the department, and if it fails to do so, the department shall choose a banking location of such bank to be the main office and shall so notify such bank.

(Ga. L. 1919, p. 135, art. 1, 1; Ga. L. 1925, p. 119, 1; Ga. L. 1927, p. 195, 1; Code 1933, 13-201; Ga. L. 1960, p. 67, 2; Code 1933, 13-201.1, enacted by Ga. L. 1960, p. 67, 3; Ga. L. 1963, p. 602, 1; Ga. L. 1970, p. 954, 2; Ga. L. 1976, p. 168, 1; Ga. L. 1986, p. 458, 8; Ga. L. 1996, p. 6, 7; Ga. L. 1997, p. 485, 20; Ga. L. 1999, p. 674, 17.)

7-1-601. Branch offices.

(a) Branch offices may be established by banks doing a lawful banking business in Georgia with the prior approval of the department as follows:

(1) New or additional branch offices may be established de novo in the manner provided in Code [Section 7-1-602](#);

(2) New or additional branch offices may be established through merger, share exchange, consolidation, or sale of assets pursuant to Part 14, 15, 16, 19, or 20 of this article;

(3) A bank may acquire a branch office from another bank without acquisition of the entire bank. However, an out-of-state bank with no lawfully established branch office in Georgia may not directly or indirectly make such an acquisition; or

(4) A bank with two or more existing banking offices in Georgia may redesignate its existing main office as a branch office in accordance with the procedures established by the department.

(b) A bank not doing a lawful banking business in Georgia may become the owner of a branch office in Georgia provided such transaction is consummated under Section 12 or 13 of the Federal Deposit Insurance Act, 12 U.S.C. Section 1811, et seq., as amended.

(c) Taxation of all banks shall be in the manner provided in [Chapter 6 of Title 48](#).

(d) Each branch office will operate under the control and direction of the board of directors and executive officers of the bank, and the bank shall be responsible for adequately staffing the branch office to conduct the business of the branch office in accordance with this chapter, federal law, and the rules and regulations of the department.

(Ga. L. 1919, p. 135, art. 1, 3; Ga. L. 1920, p. 102, 1; Ga. L. 1927, p. 195, 1; Code 1933, 13-203; Ga. L. 1960, p. 67, 4; Ga. L. 1970, p. 954, 3; Ga. L. 1975, p. 474, 1; Ga. L. 1978, p. 1710, 1; Ga. L. 1987, p. 1586, 9; Ga. L. 1996, p. 181, 9; Ga. L. 1996, p. 642, 1, 2; Ga. L. 1996, p. 848, 10; Ga. L. 1999, p. 674, 17; Ga. L. 2007, p. 502, 13/SB 70.)

7-1-602. Applications for branch offices.

(a) Application to establish a branch office shall be made to the department in such form as it may prescribe from time to time. The department shall exercise its discretion in its consideration of the application; but the department shall not approve the application until it has ascertained to its satisfaction that the public need and advantage will be promoted by the establishment of the proposed branch office, based upon the following factors:

(1) Reasonable opportunity for the proposed branch office to generate a sufficient profit;

(2) The character and fitness of the board of directors and management of the bank to command the confidence of the community and to warrant the belief that the business of the bank or trust company at the branch office will be honestly and efficiently conducted;

(3) The adequacy of the capital structure of the bank or trust company, particularly in view of the anticipated business to be generated by the proposed branch office; and

(4) The overall financial condition and safety and soundness of the applicant bank or trust company.

Where the department by rule, regulation, or written policy has provided for expedited processing of applications or for notice procedures, it may abbreviate its review of these criteria.

(b) After receipt of a complete application, the department shall have 90 days within which to approve or disapprove such application. Under normal circumstances and workload, the department will issue an approval or disapproval of a branch office within 21 days or after the end of the public comment period, whichever is later.

(c) The department may approve an application contingent upon the satisfaction of additional conditions including the submission of information such as the date of opening and the capital outlay for the branch office. If the approval of a federal regulatory agency is required with respect to the branch office, the department may at its option withhold its written approval or disapproval until such federal approval is granted or denied or may withdraw its approval if the federal agency fails to act or refuses to grant approval. If the department disapproves the branch office, it shall notify the applicant of its disapproval and state generally in writing the unfavorable factors influencing its decision. The decision of the department is final, except that it may be subject to judicial review as provided in Code [Section 7-1-90](#).

(d) The department may provide by regulation that a bank which meets certain financial and managerial criteria may, in lieu of application, file a written notification with the department at a time to be specified in such regulation. The department may waive publication requirements for such a procedure.

(e) All lawfully established banking locations existing on July 1, 1999, other than a bank's main office, shall be known and shall qualify as branch offices.

(f) In the event of merger or consolidation of two or more banks, pursuant to Parts 14 and 15 of this article, the surviving or resulting bank shall designate a main office and may retain and continue to operate any or all banking locations of each constituent bank as branch offices so long as they are consistent with and authorized by this part. In the event of the purchase of substantially all of the assets of a bank, subject to the review and approval by the commissioner of such transaction, the purchasing bank may retain and continue to operate any or all banking locations of the selling bank as branch offices so long as they are consistent with and authorized by this part.

(g) The department's approval may be revoked if conditions in the approval have not been satisfied or if other violations of law occur as a result of the branch office's opening or operation.

(Code 1933, 13-203.1, enacted by Ga. L. 1960, p. 67, 5; Ga. L. 1963, p. 602, 2; Ga. L. 1970, p. 954, 4; Ga. L. 1973, p. 127, 1; Ga. L. 1975, p. 473, 1; Ga. L. 1978, p. 1710, 3; Ga. L. 1978, p. 2068, 1; Ga. L. 1980, p. 1082, 1; Ga. L. 1983, p. 602, 14; Ga. L. 1999, p. 674, 17; Ga. L. 2000, p. 174, 13.)

7-1-603. Extension of existing banking locations; automated teller machines, cash dispensing machines, point-of-sale terminals, and other extensions.

(a) An approved banking location may have an extension, which is not a branch or main office, at which banking activities may occur. The extensions described in this Code section do not require approval but may have certain restrictions or required notifications.

(b) The following are extensions:

(1) "Automated teller machine" means electronic equipment which performs routine banking transactions including, but not limited to, the taking of deposits for the public at locations off premises of a bank's main or branch office under regulations prescribed by the commissioner.

(2) "Cash dispensing machine" means for the purposes of this part and as used in paragraph (4) of subsection (b) of Code [Section 7-1-241](#) an automated or electronic terminal which dispenses cash or scrip redeemable for goods and services or for cash, goods, and services. Such machines may provide account information but may not initiate intrabank transactions other than those necessary and incidental to the dispensing of cash.

(3) "Point-of-sale terminal" means electronic equipment located in nonbank business outlets to record electronically with a bank transactions occurring as a result of the sale of goods or services.

For purposes of this Code section, the terms "automated teller machine," "point-of-sale terminal," and "cash dispensing machine" shall not include personal communication devices such as telephones, computer terminals, modems, and other similar devices which are not accessible to the general public but are intended for use by a single bank customer. It is not the intent of this Code section to limit the ability of banks or other entities to utilize personal communication devices. The department may by regulation further define "automated teller machine," "point-of-sale terminal," "cash dispensing machine," and "personal communication device" consistent with the objectives set forth in Code [Section 7-1-3](#).

(c) The following are restrictions on location of an extension:

(1) Any Georgia state bank or credit union may operate automated teller machines throughout the state. Any bank not otherwise doing a lawful banking business in this state may operate automated teller machines throughout this state, provided such automated teller machines are unstaffed and not combined with a staffed facility. These machines may be operated individually by any bank or jointly on a cost-sharing basis by two or more banks or other financial institutions;

(2) Any bank may operate cash dispensing machines throughout the state. Access to and use of cash dispensing machines may be available to all banks in this state on an individual or a shared basis; and

(3) A point-of-sale terminal may be located anywhere in the state.

(d) An extension not defined in subsection (b) is permitted, provided such extension is located within the boundary lines of a single contiguous area of property owned or leased by the bank and used as a banking location, or if it is within 200 yards of such a banking location. Banking services may be performed at the extension. Written notification to the department is required for such extension.

(Code 1933, 13-203.2, enacted by Ga. L. 1966, p. 590, 2; Ga. L. 1973, p. 526, 1; Ga. L. 1975, p. 475, 1; Ga. L. 1995, p. 673, 24; Ga. L. 1997, p. 485, 21; Ga. L. 1999, p. 674, 17; Ga. L. 2003, p. 843, 7.)

7-1-604. Banking business prohibited except as allowed by Title 7.

No bank shall carry on or conduct or do a banking business in this state except in accordance with the provisions of this title which govern entry into this state to conduct such a business. "A banking business" is the business which a bank is authorized to do pursuant to this title.

(Code 1933, 13-204.1, enacted by Ga. L. 1967, p. 105, 1; Ga. L. 1970, p. 954, 5; Ga. L. 1999, p. 674, 17.)

7-1-605. Bank holding companies - Definitions; when company deemed to control shares.

(a)(1) Except as provided in paragraph (5) of this subsection, "bank holding company" means any company which has control over any bank or over any company that is or becomes a bank holding company by virtue of this part.

(2) Any company has "control" over a bank or over any company if:

(A) The company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the bank or company;

(B) The company controls in any manner the election of a majority of the directors or trustees of the bank or company; or

(C) The commissioner determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company.

(3) For the purposes of any proceeding under subparagraph (C) of paragraph (2) of this subsection, there is a presumption that any company which directly or indirectly owns, controls, or has power to vote less than 5 percent of any class of voting securities of a given bank or company does not have control over that bank or company.

(4) In any administrative or judicial proceeding under this part, other than a proceeding under subparagraph (C) of paragraph (2) of this subsection, a company may not be held to have had control over any given bank or company at any given time unless that company, at the time in question, directly or indirectly owned, controlled, or had power to vote 5 percent or more of any class of voting securities of the bank or company, or had already been found to have control in a proceeding under subparagraph (C) of paragraph (2) of this subsection.

(5) Notwithstanding any other provision of this subsection:

(A) No bank and no company owning or controlling voting shares of a bank is a bank holding company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in paragraphs (2) and (3) of subsection (c) of this Code section. For the purpose of the

preceding sentence, bank shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto, except that this limitation is applicable in the case of a bank or company acquiring such shares prior to July 1, 1976, only if the bank or company has the right, consistent with its obligations under the instrument, agreement, or other arrangement establishing the fiduciary relationship, to divest itself of such voting rights and fails to exercise that right to divest within a reasonable period not to exceed one year after July 1, 1976; and

(B) No company is a bank holding company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith until two years after the date of acquisition.

(6) For the purposes of this part, any successor to a bank holding company shall be deemed to be a bank holding company from the date on which the predecessor company became a bank holding company.

(b) As used in this Code section and in Code [Sections 7-1-606](#) through [7-1-608](#), the term:

(1) "Bank" means the same as defined in Code [Section 7-1-600](#).

(2) "Company" means any corporation, partnership, business trust, association, or similar organization, or any other trust unless by its terms it must terminate within 25 years or not later than 21 years and ten months after the death of individuals living on the effective date of the trust, but shall not include any corporation the majority of the shares of which are owned by the United States or by any state or any qualified family partnership as defined in the federal Bank Holding Company Act of 1956, as amended.

(3) The "Georgia Bank Holding Company Act" shall mean and include this Code section and Code [Sections 7-1-606](#) through [7-1-608](#) together with Part 19 of this article and any applicable rules and regulations.

(4) "Subsidiary," with respect to a specified bank holding company, means:

(A) Any company 25 percent or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is directly or indirectly owned or controlled by such bank holding company or is held by it with power to vote;

(B) Any company the election of a majority of whose directors is controlled in any manner by such bank holding company; or

(C) Any company with respect to the management or policies of which such bank holding company has the power, directly or indirectly, to exercise a controlling influence, as determined by the commissioner after notice and opportunity for hearing.

(5) "Successor" shall include any company which acquires directly or indirectly from a bank holding company shares of any bank, when and if the relationship between such company and the bank holding company is such that the transaction effects no substantial change in the control of the bank or beneficial ownership of such shares of such bank. The commissioner may, by regulation, further define the term "successor" to the extent necessary to prevent evasion of the purposes of this part.

(c) For the purposes of this part:

(1) Shares owned or controlled by any subsidiary of a bank holding company shall be deemed to be indirectly owned or controlled by such bank holding company;

(2) Shares held or controlled directly or indirectly by trustees for the benefit of:

(A) A company;

(B) The shareholders or members of a company; or

(C) The employees (whether exclusively or not) of a company;

shall be deemed to be controlled by such company; and

(3) Shares transferred after July 1, 1976, by any bank holding company (or by the company which, but for such transfer, would be a bank holding company) directly or indirectly to any transferee that is indebted to the transferor, or has one or more officers, directors, trustees, or beneficiaries in common with or subject to control by the transferor, shall be deemed to be indirectly owned or controlled by the transferor unless the commissioner, after opportunity for hearing, determines that the transferor is not in fact capable of controlling the transferee.

(Code 1933, 13-207, enacted by Ga. L. 1960, p. 67, 6; Ga. L. 1973, p. 281, 1; Ga. L. 1976, p. 168, 2; Ga. L. 1998, p. 795, 26; Ga. L. 1999, p. 674, 17.)

7-1-606. Bank holding companies - Actions unlawful without prior approval of commissioner; exceptions.

(a)(1) On and after July 1, 1976, it shall be unlawful, except with the prior approval of the commissioner:

(A) For any action to be taken that causes any company to become a bank holding company;

(B) For any action to be taken that causes a bank to become a subsidiary of a bank holding company;

(C) For any bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will directly or indirectly own or control 5 percent or more of the voting shares of such bank;

(D) For any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank;

(E) For any bank holding company to merge or consolidate with, or enter into a share exchange with, any other bank holding company; or

(F) For any bank holding company to take any action which would violate the federal Bank Holding Company Act of 1956, as amended.

(2) Notwithstanding paragraph (1) of this subsection, this prohibition shall not apply to:

(A) Shares acquired by a bank:

(i) In good faith in a fiduciary capacity, except where such shares are held under a trust that constitutes a company as defined in paragraph (2) of subsection (b) of Code [Section 7-1-605](#) and except as provided in paragraphs (2) and (3) of subsection (c) of Code [Section 7-1-605](#); or

(ii) In the regular course of securing or collecting a debt previously contracted in good faith, but any shares acquired after July 1, 1976, in securing or collecting any such previously contracted debt shall be disposed of within a period of two years from the date on which they were acquired;

(B) Additional shares acquired by a bank holding company in a bank in which such bank holding company owned or controlled a majority of the voting shares prior to such acquisition; or

(C) Transactions for which the department has established by rule, regulation, or written policy a streamlined or alternative procedure, if such procedure specifically dispenses with the need for approval by the commissioner.

For the purpose of this paragraph, bank shares acquired after July 1, 1976, shall not be deemed to have been acquired in good faith in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto; but, in such instances, acquisitions may be made without prior approval of the commissioner if the commissioner, upon application filed within 90 days after the shares are acquired, approves retention or, if retention is disapproved, the acquiring bank disposes of the shares or its sole discretionary voting rights within two years after issuance of the order of disapproval.

(b)(1) The commissioner shall not approve nor shall any other procedure authorize:

(A) Any acquisition or merger or share exchange or consolidation under this Code section which would result in a monopoly or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the State of Georgia; or

(B) Any other proposed acquisition or merger or share exchange or consolidation under this Code section whose effect in any section of the state may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

(2) In every case, the department shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned and the convenience and needs of the community to be served.

(c) Nothing contained in this Code section shall affect the obligation of any person or company to comply with the provisions of any order of any court or of the commissioner entered prior to July 1, 1976.

(d) The commissioner shall not grant any such contemplated approval until he or she shall first cause reasonable public notice of the proposed action to be given in the area to be affected and until he or she shall first afford to the public an opportunity to submit, for the commissioner's consideration, information, objections, and opinions as to the proposed action and its effect. The notice requirement may not apply in the case of a streamlined procedure where the holding company meets certain qualifying criteria established by rule, regulation, or written policy of the department.

(e) Notwithstanding any other provisions of this part, a bank holding company which lawfully controls a bank or has received the requisite approvals under this Code section to acquire control of a bank may, with the approval of the commissioner, or as otherwise provided in this chapter or by departmental rule or regulation, either at the time such control is obtained or at any time thereafter, merge or consolidate such bank with another of such bank holding company's banking subsidiaries or have another of such bank holding company's banking subsidiaries acquire all or substantially all of the assets of such bank and consequently operate as a branch office of such other banking subsidiary. Nothing in this subsection shall be deemed to supersede, rescind, or modify any provision, requirement, or condition of this Code section which would otherwise be applicable to any acquisition of a banking subsidiary by a bank holding company under this Code section, nor shall it be deemed to supersede, rescind, or modify any provision, requirement, or condition of Part 14, 15, 16, 19, or 20 of this article which would otherwise be applicable to the merger of banks or the acquisition or sale of all or substantially all of the assets of a bank.

(Code 1933, 13-207.1, enacted by Ga. L. 1976, p. 168, 3; Ga. L. 1980, p. 542, 1; Ga. L. 1985, p. 1506, 1; Ga. L. 1997, p. 143, 7; Ga. L. 1998, p. 795, 27; Ga. L. 1999, p. 674, 17; Ga. L. 2007, p. 502, 14/SB 70.)

7-1-607. Bank holding companies - Registration, reporting, examinations, and control.

(a) On July 1, 1976, and annually thereafter on dates established by the commissioner, each bank holding company shall register with the commissioner on forms provided or prescribed by him or her, which may include such information with respect to the financial condition, operation, management, and intercompany relationships of the bank holding company and its subsidiaries and related matters as the commissioner may deem necessary or appropriate to carry out the purposes of this part.

(b) The commissioner is authorized to issue such regulations and orders as may be necessary to enable him or her to administer and carry out the purposes of this Code section and prevent evasions thereof, and for the purpose of lessening the regulatory burden to waive certain requirements associated with the annual reporting requirements for bank holding companies that do not have their principal place of business in Georgia and do not own Georgia banks.

(c) The commissioner from time to time may require reports under oath to keep him or her informed as to whether the provisions of this Code section and such regulations and orders thereunder issued by him or her have been complied with; may make examinations of each bank holding company and each subsidiary thereof, the cost of which may be assessed against and paid by such holding company; and shall, as far as possible, use the reports of examination made by the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System for the purposes of this Code section.

(d) Bank holding companies and subsidiaries or affiliates thereof shall be regulated, controlled, and examined by the commissioner to the same extent that he or she regulates, controls, and examines state banks and other financial institutions under his or her jurisdiction, which would be in addition to the authority of the Federal Reserve Board as fixed by the laws of the United States. The commissioner is authorized, directed, and required to promulgate, with precision, rules and regulations and investment procedures in the regulation, examination, and control of bank holding companies doing business in this state.

7-1-608. Bank holding companies - Lawful and unlawful acquisitions, formations, and mergers.

(a) It shall be unlawful for a bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank, including any federal savings and loan association or federal savings bank, if, after such acquisition, such bank holding company will directly or indirectly own or control 5 percent or more of the voting shares of such bank, or for any company to become a bank holding company as a result of the acquisition of control of such bank, unless:

(1) The bank being acquired is either a "bank" for the purposes of the federal Bank Holding Company Act of 1956, as amended (12 U.S.C. Section 1841), or a "savings and loan," a "state savings and loan," a "savings bank," or a "federal savings bank" whose deposits are insured under a federal deposit insurance program; and

(2) Such bank of the type described in paragraph (1) of this subsection has been in existence and continuously operating or incorporated as a bank for a period of three years or more prior to the date of acquisition.

(b) Notwithstanding the provisions of this Code section, the following activities are permitted. These activities regarding acquisitions by purchase and by formation are to be considered exceptions to the three-year age requirement contained in paragraph (2) of subsection (a) of this Code section:

(1) A bank holding company may acquire all or substantially all of the shares of a bank or trust company organized solely for the purpose of facilitating the acquisition of a federal or state chartered bank, savings and loan association, savings bank, building and loan association, or other corporation doing a banking business in this state or the trust department of such institutions, which has been in existence and continuously operating or incorporated as such an institution or exercising trust powers for the minimum period prescribed in subsection (a) of this Code section;

(2) A company may become a bank holding company by virtue of acquiring control of a bank if neither the company nor any other company controlled by or controlling such company controls any other bank domiciled in this state or elsewhere;

(3) A bank holding company registered with the department and lawfully owning a bank or a branch of a bank which was formed by the acquisition and subsequent merger of or share exchange with a Georgia bank, which bank or branch does a lawful banking business in this state, may acquire control through formation of a de novo bank in Georgia, provided that departmental approval and any required federal approvals are obtained. No out-of-state bank holding company may enter Georgia to do a banking business by formation of a de novo bank; and

(4) A de novo bank established or formed pursuant to paragraph (3) of this subsection shall be subject to the three-year age requirement contained in paragraph (2) of subsection (a) of this Code section. A bank holding company may, however, merge or consolidate a de novo bank

which may be less than three years old and that is established pursuant to paragraph (3) of this subsection into another bank owned by that holding company.

(c) The department may waive the application of the three-year age requirement in the case of a bank that has been found by federal or state regulators to be:

(1) Insolvent or in an unsafe or unsound condition to transact its business;

(2) In a condition where it has generally suspended payment of its obligations without authority of law; or

(3) Under any plan, order, or agreement of any kind with the FDIC under Section 12, 13, or 38 of the Federal Deposit Insurance Act, 12 U.S.C. Section 1811, et seq., as amended.

(Code 1933, 13-207.3, enacted by Ga. L. 1976, p. 168, 5; Ga. L. 1980, p. 1081, 1; Ga. L. 1981, p. 1008, 1; Ga. L. 1983, p. 602, 15; Ga. L. 1985, p. 246, 2; Ga. L. 1987, p. 1586, 10; Ga. L. 1993, p. 917, 5; Ga. L. 1996, p. 848, 11; Ga. L. 1997, p. 143, 7; Ga. L. 1999, p. 674, 17; Ga. L. 2000, p. 174, 14; Ga. L. 2002, p. 670, 1; Ga. L. 2007, p. 502, 15/SB 70.)

7-1-609. Civil actions by department to enforce part.

The department may bring an appropriate civil action to enforce any provision of this part, whether by injunction or otherwise, in any superior court of this state having jurisdiction of one or more of the defendants.

(Code 1933, 13-208, enacted by Ga. L. 1960, p. 67, 7; Ga. L. 1970, p. 954, 6.)

7-1-610. National bank rights.

National banks shall have the same but no greater rights under or by virtue of this part than the rights granted to banks and trust companies organized under the laws of this state.

(Ga. L. 1960, p. 67, 2.)

7-1-611. Penalties for violations.

Any bank, bank holding company, or company (as defined in Code [Section 7-1-605](#)) which violates subsection (a) of Code [Section 7-1-601](#) or any provision of Code [Section 7-1-602](#), Code [Section 7-1-603](#), or Code [Sections 7-1-605](#) through [7-1-608](#) shall, upon conviction, be fined not less than \$500.00 nor more than \$5,000.00 unless it shall cease and desist therefrom within 60 days after notice of any such violation served on it by the department. Each day on which such violation occurs shall constitute a separate offense.

(Code 1933, 13-9938, enacted by Ga. L. 1960, p. 67, 8; Ga. L. 2000, p. 136, 7.)

7-1-612. Power of banks to contract with other banks for trust services.

Notwithstanding any other provisions of this part to the contrary, any bank or trust company which does not exercise trust powers as provided in this chapter, whether or not such powers have been incorporated into its articles, may, with the consent of the department, contract with any bank or trust company exercising trust powers to provide for the latter bank or trust company to offer trust services through the branches and offices of the former bank or trust company.

(Code 1981, 7-1-612, enacted by Ga. L. 1983, p. 602, 16; Ga. L. 1986, p. 1244, 2.)

PART 19

INTERSTATE ACQUISITIONS OF BANKS AND BANK HOLDING COMPANIES

7-1-620. Purpose of this part.

This part governs the acquisition of banks having banking offices in Georgia by bank holding companies controlling bank subsidiaries having banking offices outside this state. It further governs the acquisition of banks having banking offices outside this state by bank holding companies controlling bank subsidiaries having banking offices in Georgia. It sets forth application, notice, registration, and other related requirements. Acquisitions of banks having banking offices only in Georgia by bank holding companies controlling only bank subsidiaries having banking offices solely in Georgia are governed by the provisions of Code [Sections 7-1-605](#) through [7-1-608](#).

(Code 1981, 7-1-620, enacted by Ga. L. 1996, p. 279, 1; Ga. L. 2004, p. 631, 7.)

7-1-621. Definitions.

As used in this part, the term:

(1) "Acquire," as applied to a bank holding company, means any of the following actions or transactions:

(A) The merger or consolidation with another bank holding company;

(B) The acquisition of the direct or indirect ownership or control of voting shares of another bank holding company or bank if, after such acquisition, such bank holding company will directly or indirectly own or control more than 5 percent of any class of voting shares of such bank holding company or bank;

(C) The direct or indirect acquisition of all or substantially all of the assets of another bank holding company or bank; or

(D) The taking of any other action that would result in the direct or indirect control of another bank holding company or bank.

"Acquire" shall also include a transaction where a bank subsidiary of a bank holding company merges or consolidates with, or acquires all or substantially all of the assets of, another bank.

(2) "Bank" means any insured institution as such term is defined in Section 3(h) of the Federal Deposit Insurance Act, 12 U.S.C. Section 1813(h) or any institution eligible to become such, provided that the term "bank" shall not include any "foreign bank" (which is defined as in 12 U.S.C. Section 3101 of the International Banking Act of 1978). The term "bank" as used in this part shall include any building and loan association, savings and loan association, or state savings and loan association as such terms are defined in Code [Section 7-1-4](#) and shall include federal savings banks and similar banking entities chartered under the laws of any state and whose deposits are insured under a federal deposit insurance program.

(3) "Bank holding company" means any company which is a bank holding company under either Code [Section 7-1-605](#) or Section 2(a) of the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. Section 1841(a).

(4) "Bank supervisory agency" means:

(A) The Office of Comptroller of Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision, and any successor to those agencies; and

(B) The agency of a state with primary responsibility for chartering and supervising banks.

(5) "Banking office" or "banking location" means a main office or a branch office as such terms are defined in this chapter or any other office at which a bank accepts deposits.

(6) "Commissioner" means the commissioner of banking and finance then in office and, where appropriate, all of his or her successors and predecessors in office.

(7) "Control" means that which is set forth either in Code [Section 7-1-605](#) or Section 2(a) of the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. Section 1841(a).

(8) "Deposits" means, with respect to a bank, all demand, time, and savings deposits of individuals, partnerships, corporations, the United States government, and states and political subdivisions in the United States. Determinations of deposits shall be made by reference to regulatory reports of condition or similar reports filed by such bank with state or federal regulatory authorities.

(9) "Georgia bank" means a bank whose home state is Georgia.

(10) "Georgia bank holding company" means a bank holding company that:

(A) Has its principal place of business in the State of Georgia; and

(B) Is not controlled by a bank holding company other than a Georgia bank holding company.

(11) "Georgia state bank" means a bank chartered under the laws of the State of Georgia.

(12) "Home state" means any state in the United States:

(A) With respect to a state bank, the state by which the bank is chartered;

(B) With respect to a national bank, the state in which the main office of the bank is located;
or

(C) With respect to a foreign bank, the state determined to be the home state of the foreign bank under 12 U.S.C. Section 3101(c) of the International Banking Act.

(13) "Home state regulator" means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which such bank is chartered.

(14) "Host state" means a state, other than the home state of a bank, in which the bank maintains or seeks to establish and maintain a branch.

(15) "Insured depository institution" shall have the same meaning as set forth in 12 U.S.C. Section 1813(c)(2) and (3) of the Federal Deposit Insurance Act.

(16) "Interstate merger transaction" means:

(A) The merger or consolidation of banks with different home states and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank;
or

(B) The purchase of all or substantially all of the assets of a bank whose home state is different from the home state of the acquiring bank.

(17) "Out-of-state bank" means a bank whose home state is not Georgia, but the term does not include a foreign bank.

(18) "Out-of-state bank holding company" means a bank holding company other than a Georgia bank holding company.

(19) "Out-of-state state bank" means a bank chartered under the laws of a state other than Georgia.

(20) "Principal place of business" of a bank holding company means the state of charter in which the aggregate deposits of the bank subsidiaries of such bank holding company are largest.

(21) "Resulting bank" means a bank that has resulted from an interstate merger transaction under Part 20 of this article.

(22) "State" means any state of the United States, including the District of Columbia.

(23) "Subsidiary" means that which is set forth either in Code [Section 7-1-605](#) or Section 2 of the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. Section 1841.

(Code 1981, 7-1-620, enacted by Ga. L. 1984, p. 1467, 1; Ga. L. 1987, p. 251, 1; Ga. L. 1988, p. 13, 7; Ga. L. 1994, p. 215, 1; Code 1981, 7-1-621, as redesignated by Ga. L. 1996, p. 279, 1; Ga. L. 1997, p. 143, 7; Ga. L. 1999, p. 674, 18; Ga. L. 2000, p. 174, 15.)

7-1-622. Provisions applicable to interstate acquisitions or mergers by bank holding companies; eligibility of applicants; commissioner's ruling required.

(a) A bank holding company may acquire a bank in Georgia, and a bank holding company having its principal place of business in this state may acquire a bank having banking offices in another state, upon compliance with the provisions of Code [Sections 7-1-605 through 7-1-612](#) and in particular Code [Section 7-1-606](#), which provisions shall be expressly applicable to any such acquisition. Compliance with all applicable regulations, payment of applicable fees, and registration of the holding company shall be required. The restrictions of this Code section shall apply.

(b) Notwithstanding anything contained in subsection (a) of this Code section and subject to the permitted acquisitions of subsection (b) of Code [Section 7-1-608](#), no bank or bank holding company may:

(1) Directly or indirectly acquire a Georgia bank unless such bank has been in existence and continuously operated or incorporated as a bank for a period of three years or more prior to the date of acquisition. Notwithstanding the foregoing, nothing shall prohibit an out-of-state bank holding company from acquiring all or substantially all of the shares of a Georgia bank organized solely for the purpose of facilitating the acquisition of a bank which has been in existence and continuously operated as a bank for the requisite three-year period; or

(2) Directly or indirectly acquire a bank having banking offices in Georgia if:

(A) Immediately before the consummation of the acquisition for which an application is filed, the applicant (including any insured depository institution affiliate of the applicant) controls any insured depository institution or any branch of an insured depository institution in this state; and

(B) The applicant (including all insured depository institutions which are affiliates of the applicant), upon consummation of the acquisition, would control 30 percent or more of the total amount of deposits of insured depository institutions in this state. The commissioner may by regulation adopt a procedure whereby the foregoing limitations on concentration of deposits may be waived upon showing of good cause. This restriction shall not apply, in the discretion of the commissioner, to transactions complying with paragraph (1) of subsection (b) of Code [Section 7-1-623](#).

(c) The commissioner must rule on any application seeking approval to engage in a transaction under this Code section not later than 90 days following the date of submission of a completed application seeking such approval. If the commissioner decides to hold a public hearing in connection with the application, the time limit specified may be extended to 30 days after the conclusion of the hearing. If the commissioner fails to rule on the application within the requisite period, the proposed transaction shall stand approved.

(d) If any acquisition involves or takes the form of an interstate merger transaction, the banks involved must comply with filing and other requirements in Part 20 of this article in addition to subsection (b) of this Code section.

(e) This part is not intended to discriminate against out-of-state bank holding companies or against foreign bank holding companies in any manner that would violate Section 3(d) of the Bank Holding Company Act, as amended by the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994.

(Code 1981, 7-1-621, enacted by Ga. L. 1984, p. 1467, 1; Ga. L. 1994, p. 215, 2; Code 1981, 7-1-622, as redesignated by Ga. L. 1996, p. 279, 1; Ga. L. 1997, p. 485, 22; Ga. L. 1999, p. 674, 19; Ga. L. 2002, p. 670, 2.)

7-1-623. Acquisitions not requiring department approval.

(a) Subject to any applicable restrictions or exceptions provided for in subsection (b) of Code [Section 7-1-622](#), a bank holding company having a bank subsidiary with banking offices in Georgia may acquire a bank that does not have banking offices in this state, and a bank holding company, which may or may not have an out-of-state bank subsidiary having only branch offices in Georgia, may acquire an out-of-state bank with branch offices in Georgia, but shall notify the department at least 30 days prior to the consummation of the proposed transaction. The notification requirements of this subsection shall be satisfied by furnishing the department with a copy of the application or applications filed with applicable bank supervisory agencies seeking approval for the proposed transaction and such other information as the department shall request. In lieu of furnishing the entire application, the applicant may submit to the department a description of the transaction within the same time frame. In this event, the department shall request further information only if needed. The department may, for good cause shown, object to the transaction by letter to the bank holding company and to the appropriate federal or state regulator before consummation of the transaction. Annual registration of the holding company with the department is required so long as it has banking offices in Georgia.

(b) A bank holding company may engage in the transactions described in paragraphs (1) and (2) of this subsection without the necessity of complying with Code [Section 7-1-622](#), provided that it notifies the department not less than 30 days following the consummation of the transaction.

(1) The acquisition of a Georgia bank, if such acquisition has been consummated with assistance from the Federal Deposit Insurance Corporation under Section 13(c) of the Federal Deposit Insurance Act, as amended, 12 U.S.C. Section 1823(c); or

(2) The acquisition of a Georgia bank, if such acquisition has been consummated in the regular course of securing or collecting a debt previously contracted in good faith, as provided in and subject to the requirements of Section 3(a) of the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. Section 1842(a). If the bank acquired under this provision has banking offices in Georgia, the bank or bank holding company must divest the securities or assets acquired within two years of the date of acquisition. The department may, in its discretion, permit the bank or bank holding company to retain such interest for up to three additional periods of one year each.

(Code 1981, 7-1-622, enacted by Ga. L. 1984, p. 1467, 1; Ga. L. 1988, p. 13, 7; Ga. L. 1994, p. 215, 3; Code 1981, 7-1-623, as redesignated by Ga. L. 1996, p. 279, 1; Ga. L. 1999, p. 674, 20.)

7-1-624. Prohibited acquisitions.

(a) Except as expressly permitted under this part, Part 20 of this article, or by federal law, no bank holding company may acquire a bank or a bank holding company controlling a bank having banking offices in Georgia.

(b) In the event any bank holding company makes an acquisition that is prohibited by this part, the commissioner shall require such bank holding company to divest itself immediately of its direct or indirect ownership or control of any Georgia banks or banking offices located in Georgia. In addition, the commissioner shall have the power to enforce any other prohibitions in this part by requiring divestitures of nonconforming banks, bank holding companies, or assets through the imposition of fines and penalties or through the exercise of such other remedies as are provided in this chapter, including but not limited to judicial actions.

(Code 1981, 7-1-623, enacted by Ga. L. 1984, p. 1467, 1; Ga. L. 1985, p. 149, 7; Ga. L. 1994, p. 215, 4; Code 1981, 7-1-624, as redesignated by Ga. L. 1996, p. 279, 1; Ga. L. 1997, p. 143, 7.)

7-1-625. Provisions applicable to, and qualification of, bank holding companies in state; reciprocal agreements; confidentiality of reports.

(a) Any bank holding company controlling a bank having banking offices in Georgia shall be subject to the provisions of Code [Sections 7-1-605](#) through [7-1-612](#) and the rules and regulations of the department applicable to bank holding companies.

(b) Any bank holding company that has a bank subsidiary with banking offices in Georgia that is not otherwise organized under the laws of this state or qualified to do business in this state shall qualify to do business in this state as a foreign corporation and shall advise the department of the location of its initial registered office within this state and the name of its initial registered agent at such location. Such bank holding company shall agree to be bound by all the provisions of Code [Sections 7-1-605](#) through [7-1-612](#) and by the provisions of this part. Any bank holding company having a Georgia bank subsidiary shall promptly advise the department of any changes in its registered office and agent.

(c) The department may enter into cooperative and reciprocal agreements with the bank regulatory authorities of any state for the periodic examination of bank holding companies and may accept reports of examination and other records from such authorities in lieu of conducting its own examinations. The department may enter into joint actions with other regulatory bodies having concurrent jurisdiction or may enter into such actions independently to carry out its responsibilities under this title and assure compliance with the laws of this state. Any examinations or reports originated by Georgia or by another bank supervisory agency shall be deemed and treated as confidential according to Georgia law, and such confidentiality shall not be affected by the sharing of the examinations or reports. The department shall not be obligated to provide or disclose such examinations and reports to any third party. Agreements to share such examinations or reports shall contain provisions for dealing with confidentiality and subpoenas.

(Code 1981, 7-1-624, enacted by Ga. L. 1984, p. 1467, 1; Ga. L. 1994, p. 215, 5; Code 1981, 7-1-625, as redesignated by Ga. L. 1996, p. 279, 1.)

7-1-626. Severability; construction with other laws.

(a) It is the express intention of the Georgia General Assembly to provide a unified and orderly method of permitting limited interstate banking. Thus, if any provision of this part establishing the framework within which interstate banking may occur or providing for registration, approval, and supervisory powers of the department and the commissioner is determined by final, nonappealable order of any Georgia or federal court of competent jurisdiction to be invalid or unconstitutional, the remaining provisions of this part shall not be affected and shall continue to apply to any bank, bank holding company, foreign bank, or other person or circumstance.

(b) Nothing contained in this part shall be construed to amend or modify the provisions of any other part of this chapter governing the supervision or regulation of banks and bank holding companies, as defined in this part, or the organization and powers of the department and the commissioner with respect thereto as provided in such other parts.

(Code 1981, 7-1-625, enacted by Ga. L. 1984, p. 1467, 1; Ga. L. 1994, p. 215, 6; Code 1981, 7-1-626, as redesignated by Ga. L. 1996, p. 279, 1.)

7-1-627. Resolution to except bank or bank holding company from acquisition; severability.

Repealed by Ga. L. 1996, p. 279, 1, effective April 1, 1996.

PART 20

INTERSTATE BANKING AND BRANCHING BY MERGER

7-1-628. Purpose and scope of part.

(a) It is the purpose of this part to permit interstate banking and branching by merger under Section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, subject to the limitations and requirements set out in this part and in Parts 14, 15, 18, and 19 of this article.

(b) The scope of this part covers mergers where, upon consummation of the interstate merger transaction, the resulting bank will have banking locations in Georgia and at least one other state. It provides for certain approval, notice, registration, and other requirements. Mergers involving banks having present and resulting branches located only in this state are governed by Parts 14 and 15 of this article. To the extent a bank participating in an interstate merger transaction is owned or controlled by a bank holding company, the applicable provisions of Part 19 of this article shall also apply.

(c) In authorizing the expansion of interstate banking to this state, and in the interests of its citizens, the General Assembly finds that primary consideration should be given to the following:

(1) Affording protection and promoting convenience to bank depositors and other customers of financial institutions in this state;

(2) Preserving the advantages of a sound dual banking system and the competitive equality of state chartered institutions with federally chartered institutions;

(3) Supervising, regulating, and keeping records of all persons, firms, corporations, associations, and other business entities who furnish depository, lending, and associated financial services in this state; and

(4) Providing to the Department of Banking and Finance sufficient powers and responsibilities to implement these considerations.

(d) This part is not intended to discriminate against out-of-state bank holding companies or against foreign bank holding companies in any manner that would violate Section 3(d) of the Bank Holding Company Act, as amended by the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994.

(Code 1981, 7-1-628, enacted by Ga. L. 1996, p. 279, 2; Ga. L. 1998, p. 128, 7.)

7-1-628.1. Definitions.

As used in this part, the term:

(1) "Bank" shall have the same meaning as set forth in 12 U.S.C. Section 1813(h) of the Federal Deposit Insurance Act, provided that the term "bank" shall not include any "foreign bank" (which is defined as in 12 U.S.C. Section 3101 of the International Banking Act of 1978).

(2) "Bank holding company" shall have the same meaning as set forth in 12 U.S.C. Section 1841(a)(1) of the Bank Holding Company Act.

(3) "Bank supervisory agency" shall mean:

(A) Office of Comptroller of Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and any successor to those agencies; and

(B) The agency of a state with primary responsibility for chartering and supervising banks.

(4) "Branch" in the context of this part shall have the same meaning as "domestic branch" in 12 U.S.C. Section 1813(o) of the Federal Deposit Insurance Act. Nothing contained in this part shall be construed to amend or modify the provisions of any other part of this article.

(5) "Commissioner" means the commissioner of banking and finance then in office and, where appropriate, all of his or her successors and predecessors in office.

(6) "Control" means that which is set forth either in Code [Section 7-1-605](#) or Section 2(a) of the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. Section 1841(a).

(7) "Deposits" means, with respect to a bank, all demand, time, and savings deposits of individuals, partnerships, corporations, the United States government, and states and political subdivisions in the United States. Determinations of deposits shall be made by reference to

regulatory reports of condition or similar reports filed by such bank with state or federal regulatory authorities.

(8) "Georgia bank" means a bank whose home state is Georgia.

(9) "Georgia bank holding company" means a bank holding company that:

(A) Has its principal place of business in the State of Georgia; and

(B) Is not controlled by a bank holding company other than a Georgia bank holding company.

(10) "Georgia state bank" means a bank chartered under the laws of the State of Georgia.

(11) "Home state" means:

(A) With respect to a state bank, the state by which the bank is chartered;

(B) With respect to a national bank, the state in which the main office of the bank is located;
or

(C) With respect to a foreign bank, the state determined to be the home state of the foreign bank under 12 U.S.C. Section 3101(c) of the International Banking Act.

(12) "Home state regulator" means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which such bank is chartered.

(13) "Host state" means a state, other than the home state of a bank, in which the bank maintains or seeks to establish and maintain a branch.

(14) "Insured depository institution" shall have the same meaning as set forth in 12 U.S.C. Section 1813(c)(2) and (3) of the Federal Deposit Insurance Act.

(15) "Interstate merger transaction" means:

(A) The merger or consolidation of banks with different home states and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank;
or

(B) The purchase of all or substantially all of the assets of a bank whose home state is different from the home state of the acquiring bank.

(16) "Out-of-state bank" means a bank whose home state is not Georgia, but the term does not include a foreign bank.

(17) "Out-of-state bank holding company" means a bank holding company other than a Georgia bank holding company.

(18) "Out-of-state state bank" means a bank chartered under the laws of a state other than Georgia.

(19) "Principal place of business" of a bank holding company means the state of charter in which the aggregate deposits of the bank subsidiaries of such bank holding company are largest.

(20) "Resulting bank" means a bank that has resulted from an interstate merger transaction under this part.

(21) "State" means any state of the United States, including the District of Columbia.

(22) "Subsidiary" means that which is set forth either in Code [Section 7-1-605](#) or Section 2 of the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. Section 1841.

(Code 1981, 7-1-628.1, enacted by Ga. L. 1996, p. 279, 2; Ga. L. 1999, p. 674, 21; Ga. L. 2000, p. 174, 16.)

7-1-628.2. Mergers permitted; applicable provisions.

Interstate merger transactions between out-of-state banks and Georgia banks including Georgia state banks shall be permitted provided that the applicable conditions, approvals, and filing requirements are met by participating banks and bank holding companies. The approval procedure for mergers involving banks having offices located only in this state are governed by Parts 14 and 15 of this article. To the extent a bank participating in a merger is owned or controlled by a bank holding company, the provisions of Part 19 of this article shall also apply to the transaction.

(Code 1981, 7-1-628.2, enacted by Ga. L. 1996, p. 279, 2; Ga. L. 1997, p. 485, 23.)

7-1-628.3. Prohibited interstate merger transactions.

(a) Except as otherwise expressly provided in this subsection, an interstate merger transaction shall not be permitted under this part if:

(1) Immediately before the merger, any two or more banks involved in the transaction (including all insured depository institutions which are affiliates of any such bank) have a branch in this state; and

(2) Upon consummation of such transaction, the resulting bank (including all insured depository institutions that would be "affiliates," as defined in 12 U.S.C. Section 1841(k) of the resulting bank) would control 30 percent or more of the total amount of deposits held by all insured depository institutions in this state. The 30 percent limitation shall not apply, in the discretion of the commissioner, to transactions complying with paragraph (1) of subsection (b) of Code [Section 7-1-623](#). The commissioner may by regulation adopt a procedure whereby the foregoing limitations on concentration of deposits may be waived upon showing good cause.

(b) An interstate merger transaction shall not be permitted under this part unless the Georgia bank shall have been in existence and continuously operating or incorporated as a bank on the date of such merger or acquisition for a period of at least three years, subject to any applicable exception contained in subsection (b) of Code [Section 7-1-608](#).

(Code 1981, 7-1-628.3, enacted by Ga. L. 1996, p. 279, 2; Ga. L. 1997, p. 485, 23; Ga. L. 1999, p. 674, 22; Ga. L. 2002, p. 670, 3.)

7-1-628.4. Permissible interstate merger transactions.

(a) A Georgia state bank may enter into an interstate merger transaction where the Georgia state bank is the resulting bank, and as a result the Georgia state bank may establish, maintain, and operate one or more branches in another state. The Georgia state bank must seek approval for the merger pursuant to the provisions in Part 14 of this article and must comply with federal law.

(b) An out-of-state bank may enter into an interstate merger transaction with a Georgia bank, and an out-of-state bank resulting from such transaction may maintain and operate branches in Georgia. The requirements of Code [Section 7-1-628.5](#) shall be met by the resulting bank. In order to consummate such a merger with a resulting out-of-state state bank, a Georgia state bank shall comply with Code [Sections 7-1-531](#) through [7-1-533](#) and [7-1-537](#), except that the format of the articles of merger submitted in accordance with Code [Section 7-1-532](#) may be in conformity with the resulting bank's home state law if such law requires a format different from that specified by Code [Section 7-1-532](#). A Georgia state bank shall comply with Code [Section 7-1-556](#) if a national bank or a federal savings bank is to be the resulting bank.

(c) Any out-of-state bank which lawfully establishes a branch in this state or which subsequently becomes the owner of or controls interstate branches in Georgia, if such transaction is not covered by subsection (a) or (b) of this Code section, shall comply with the requirements in Code [Section 7-1-628.5](#).

(Code 1981, 7-1-628.4, enacted by Ga. L. 1996, p. 279, 2; Ga. L. 1999, p. 674, 23.)

7-1-628.5. Requirement for out-of-state bank that is resulting bank of interstate merger transaction.

(a) An out-of-state bank that is to be the resulting bank of an interstate merger transaction shall comply or assure compliance with the following requirements:

(1) Part 19 of this article, if applicable to the transaction shall require any holding company of the resulting bank to comply with Code [Sections 7-1-605](#) through [7-1-612](#);

(2) An out-of-state bank that will be the resulting bank pursuant to an interstate merger transaction involving a Georgia state bank shall notify the commissioner of the proposed merger not later than the date on which it files an application for an interstate merger transaction with the responsible federal bank supervisory agency, provide such information as the commissioner may specify, and pay any filing fee required by regulation;

(3) Prior to consummation of the merger, the resulting bank shall provide the commissioner with satisfactory evidence of all required approvals from all relevant bank supervisory agencies;

(4) An out-of-state bank holding company that may be the owner of the resulting bank shall provide satisfactory evidence to the commissioner of compliance with applicable requirements of Article 15 of [Chapter 2](#) of [Title 14](#) of the Georgia Business Corporation Code, "Foreign Corporations," and shall notify the department of its location, any changes in its initial registered office within this state, and the name of its registered agent at such location. An out-of-state resulting bank shall notify the department of the location of its initial office, any subsequent registered office, and the name of its current registered agent;

(5) Each bank or bank holding company attempting to establish interstate branches in Georgia shall provide to the department a certification that all applicable Georgia laws and regulations

have been satisfied or a copy of the Uniform Interagency Branch Application. The department may, if appropriate and after its own investigation, provide to the applicable state or federal regulator a certificate of compliance or a statement of noncompliance with Georgia law, together with any advisory comments; and

(6) The out-of-state bank must certify to the department that while it maintains a branch in Georgia it will meet the conditions set forth in this part and comply with all applicable Georgia laws and any rules issued under the laws of this state, as well as any orders or directives issued to the bank by the commissioner.

(b) In order to facilitate the cooperation between state regulatory authorities, an out-of-state state bank that is the resulting bank of an interstate merger transaction shall comply or assure compliance with the following additional requirements:

(1) The supervisor of the out-of-state state bank must agree to share with the commissioner examination reports prepared by the supervisor and any other information deemed necessary by the commissioner regarding such bank. The exam reports from any other state shall be considered to be the other state's property and shall be protected as confidential by Georgia law; and

(2) The out-of-state state bank must agree to make available to the commissioner any information that may be deemed necessary to protect Georgia consumers.

(Code 1981, 7-1-628.5, enacted by Ga. L. 1996, p. 279, 2; Ga. L. 1998, p. 128, 7; Ga. L. 1999, p. 674, 24.)

7-1-628.6. Powers of out-of-state banks branching into Georgia.

(a) An out-of-state state bank which establishes and maintains one or more branches in Georgia under this part may conduct any activities at such branch or branches that are authorized under the law of this state for Georgia state banks, and if an activity is one that requires the prior approval of the commissioner, such approval must be secured prior to commencing such activity.

(b) A Georgia state bank may conduct any activities at any branch outside Georgia that are authorized by Georgia law or that are permissible for a bank chartered by the host state where the branch is located, except to the extent such activities are expressly prohibited by the laws of this state or by any regulation or order of the commissioner applicable to the Georgia state bank and except where the activity is one that requires approval from the department, in which case such approval must be secured; provided, however, that the commissioner may waive any prohibition or requirement for approval if he or she determines, by order or regulation, that the involvement of out-of-state branches of the Georgia state bank in particular activities would not threaten the safety or soundness of such bank.

(c) An out-of-state bank that has established or acquired a branch in Georgia under this part may establish or acquire additional branches in Georgia to the same extent, but to no greater extent, that any Georgia bank may establish or acquire a branch in Georgia under applicable federal and state law. Notification to the department from the bank is required at the same time as the application is made to the federal regulator. A letter describing the transaction shall constitute the required notification and may be written and sent by the bank or the home state regulator.

(Code 1981, 7-1-628.6, enacted by Ga. L. 1996, p. 279, 2; Ga. L. 1999, p. 674, 25; Ga. L. 2001, p. 970, 8.)

7-1-628.7. Examinations and reports; powers of commissioner.

(a) To the extent consistent with subsection (c) of this Code section, the commissioner may make such examinations of any branch established and maintained in this state by an out-of-state state bank as the commissioner may deem necessary to determine whether the branch is being operated in compliance with the laws of this state and in accordance with safe and sound banking practices. The provisions of Parts 3 and 4 of Article 1 of this chapter are applicable to examinations.

(b) The commissioner may prescribe requirements for periodic reports regarding any out-of-state bank that operates a branch in Georgia pursuant to this part. The required reports shall be provided by such bank or by the bank supervisory agency having primary responsibility for such bank. Any reporting requirements prescribed by the commissioner under this subsection shall be: (1) consistent with the reporting requirements applicable to Georgia state banks; and (2) appropriate for the purpose of enabling the commissioner to carry out his or her responsibilities under this Code section.

(c) The commissioner may enter into cooperative, coordinating, and information sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch in Georgia of an out-of-state state bank or of any branch of a Georgia state bank in any host state, and the commissioner may accept such parties' reports of examination and reports of investigation in lieu of conducting his or her own examinations or investigations. Agreements to share should contain provisions for dealing with confidentiality and subpoenas.

(d) Notwithstanding any other law to the contrary, the commissioner may enter into contracts with any bank supervisory agency that has concurrent jurisdiction over a Georgia state bank or an out-of-state state bank operating a branch in this state pursuant to this part to engage the services of such agency's examiners at a reasonable rate of compensation, to provide the services of the commissioner's examiners to such agency at a reasonable rate of compensation, or for another arrangement that the commissioner may find expedient and reasonable.

(e) If appropriate in the discretion of the commissioner and pursuant to an interstate agreement with the pertinent host state regulator for the purpose of facilitating the regulation and supervision of a multistate Georgia state bank, the department may approve and collect from its chartered bank, as agent and home state regulator, examination and supervision fees assessed by a state where the Georgia bank has a branch and may remit such fees to the assessing out-of-state regulator. Such fees shall not be considered revenue payable to the State of Georgia.

(f) In order to facilitate or implement interstate efforts to regulate and supervise a multistate Georgia state bank, the department may adjust its normal supervision examination fee assessment schedule and other rates and charges. Such adjustment may include any examination and supervision fees assessed by host state regulators, pursuant to subsection (e) of this Code section, as a part of the standard supervision and examination assessment.

(g) The commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch in Georgia of an out-of-state state bank or any branch of a Georgia state bank in any host state, provided that the commissioner may at any time take such actions independently if he or she deems such actions to be necessary or appropriate to carry out his or her responsibilities under this part or to ensure compliance with the laws of this state, but provided further that, in the case of an out-of-state state bank, the commissioner shall recognize the exclusive authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(h) Each out-of-state bank that maintains one or more branches in this state may be assessed and, if assessed, shall pay supervisory and examination fees in accordance with the laws of this state and regulations of the department.

(i) Any examinations or reports originated by Georgia or by another bank supervisory agency shall be deemed and treated as confidential according to Georgia law, and such confidentiality shall not be affected by the sharing of the examination or reports. The department shall not be obligated to provide or disclose such examinations or reports to any third party.

(Code 1981, 7-1-628.7, enacted by Ga. L. 1996, p. 279, 2; Ga. L. 2000, p. 174, 17.)

7-1-628.8. Restrictions on de novo branches.

(a) A "de novo branch" means a branch of a bank which:

(1) Is originally established by the bank as a branch; and

(2) Does not become a branch of the bank as a result of the acquisition of another bank or of a branch of another bank or as the result of the merger, consolidation, or conversion of any such bank or branch.

(b) No out-of-state bank shall establish or maintain a de novo branch in this state unless such bank has lawfully established a branch in Georgia, and then only to the extent that any Georgia bank could establish such a de novo branch.

(c) By enacting this Code section and Code [Section 7-1-628.9](#), the General Assembly intends to permit entry into Georgia only by acquisition of or merger with an entire bank, subject to the three-year rule contained in Code [Sections 7-1-608, 7-1-622, and 7-1-628.3](#).

(Code 1981, 7-1-628.8, enacted by Ga. L. 1996, p. 279, 2; Ga. L. 1997, p. 485, 24; Ga. L. 2002, p. 670, 4.)

7-1-628.9. Restrictions on purchase of branches.

Unless otherwise expressly permitted by Georgia law or regulation, no bank may acquire a branch of any other bank in Georgia without the acquisition of the entire bank, unless the acquiring bank could lawfully establish a branch in the geographic area where the branch to be acquired is located.

(Code 1981, 7-1-628.9, enacted by Ga. L. 1996, p. 279, 2.)

7-1-628.10. Enforcement actions by commissioner.

If the commissioner determines that a branch maintained by an out-of-state state bank in this state is being operated in violation of any provision of the laws of this state or that such branch is being operated in an unsafe and unsound manner, the commissioner shall have the authority to take all such enforcement actions as he or she would be empowered to take if the branch were a Georgia state bank, provided that the commissioner shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state state bank and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving said enforcement action.

(Code 1981, 7-1-628.10, enacted by Ga. L. 1996, p. 279, 2.)

7-1-628.11. Regulations; administrative fees.

The commissioner may promulgate such regulations and may provide for the payment of such reasonable filing, application, assessment, and administrative fees as he or she determines to be necessary or appropriate in order to implement the provisions of this part.

(Code 1981, 7-1-628.11, enacted by Ga. L. 1996, p. 279, 2.)

7-1-628.12. Reports required of out-of-state state banks.

The commissioner may require an out-of-state state bank that maintains or seeks to establish a branch in this state to submit to the department its consolidated reports of condition and income in the form specified by the Federal Financial Institutions Examination Council. In order to determine compliance with Georgia law on deposit concentration limits or other areas of state compliance, other reporting of banks may be required by the commissioner.

(Code 1981, 7-1-628.12, enacted by Ga. L. 1996, p. 279, 2.)

7-1-628.13. Notice of merger consolidation, or other transaction involving out-of-state bank.

Each out-of-state state bank that has established and maintains a branch or which intends to establish a branch in this state pursuant to this part or the person seeking to obtain control of the out-of-state state bank shall give to the commissioner at least 30 days' written notice (or, in the case of an emergency transaction, such shorter notice as is consistent with applicable state or federal law) of any merger, consolidation, or other transaction that would cause a change of control with respect to such bank or any bank holding company that controls such bank, with the result that an application would be required to be filed pursuant to the federal Change in Bank Control Act of 1978, as amended, 12 U.S.C. Section 1817(j), or the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. Section 1841, et seq., or any successor statutes thereto.

(Code 1981, 7-1-628.13, enacted by Ga. L. 1996, p. 279, 2; Ga. L. 2004, p. 631, 7.)

7-1-628.14. Severability; construction with other laws.

(a) If any provision of this part or the application of such provision is found by any court of competent jurisdiction in the United States to be invalid as it pertains to any bank, bank holding company, foreign bank, or other person or circumstances, or is found to be superseded explicitly by federal law, the remaining provisions of this part shall not be affected and shall continue to apply to any bank, bank holding company, foreign bank, or other person or circumstance.

(b) Nothing contained in this part shall be construed to amend or modify the provisions of any other part of this chapter governing the supervision or regulation of banks and bank holding companies, as defined in this chapter, or with respect to the organization and powers of the department and the commissioner as provided in such other parts.

(Code 1981, 7-1-628.14, enacted by Ga. L. 1996, p. 279, 2.)

7-1-628.15. Tax treatment.

(a) All banks engaged in interstate banking and branching in this state shall be obliged to adhere to the tax laws and regulations of [Title 48](#) which pertain to such activities.

(b) The Department of Revenue shall address the tax treatment of financial organizations before June 1, 1997, in order to provide timely and appropriate taxation of banks which have adjusted their corporate structures according to this part and federal law.

(Code 1981, 7-1-628.15, enacted by Ga. L. 1996, p. 279, 2.)

ARTICLE 10 TRANSITION PROVISIONS; FEES OF SECRETARY OF STATE

7-1-860. Application of chapter.

This chapter applies to transactions and events occurring on and after April 1, 1975.

(Code 1933, 41A-3701, enacted by Ga. L. 1974, p. 705, 1.)

7-1-861. Completion of pending transactions; continuation of existing charters, appointments, regulations, and fees.

(a) Transactions validly entered into before April 1, 1975, and the rights, duties, and interests flowing from them remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law amended or repealed by this chapter as though such repeal or amendment had not occurred.

(b) The validity of existing articles and charters shall not be impaired by this chapter. Appointments of officers in effect on April 1, 1975, shall continue in force until changed as permitted by this chapter or other applicable law. Regulations which have been issued by the department or the commissioner and fee schedules established by either of them or existing pursuant to statute shall remain in effect until changed pursuant to this chapter.

(Code 1933, 41A-3702, enacted by Ga. L. 1974, p. 705, 1.)

7-1-862. Fees to be paid to Secretary of State.

The Secretary of State shall charge and collect fees with regard to filings by persons subject to the provisions of this chapter to the same extent as are charged and collected with regard to similar filings by corporations organized under [Chapter 2](#) of [Title 14](#), known as the "Georgia Business Corporation Code."

(Code 1933, 41A-3703, enacted by Ga. L. 1974, p. 705, 1; Ga. L. 1983, p. 602, 21; Ga. L. 1989, p. 1257, 32.)

ARTICLE 11 RECORDS AND REPORTS OF CURRENCY TRANSACTIONS

7-1-910. Purpose.

It is the purpose of this article to require certain reports and records of transactions involving United States currency where such reports and records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

(Code 1981, 7-1-910, enacted by Ga. L. 1982, p. 2219, 1.)

7-1-911. Definitions.

As used in this article, the term:

- (1) "Commissioner" means the commissioner of banking and finance.
- (2) "Conducts" includes initiating, concluding, or participating in initiating or concluding a transaction.
- (3) "Currency" means currency and coin of the United States.
- (4) "Currency transaction" means a transaction:
 - (A) Initiated from the receipt or payment of currency or concluding with the receipt or payment of currency; or
 - (B) Involving the movement or transfer of monetary value by electronic means other than within the books of account of the same financial institution.
- (5) "Department" means the Department of Banking and Finance of the State of Georgia.
- (6) "Financial institution" means:
 - (A) A state or national bank;

(B) A trust company;

(C) A building and loan association, state savings and loan association, or a federal savings and loan association;

(D) A state or federal credit union;

(E) An international bank agency doing business in this state on April 1, 1975, pursuant to the former "International Bank Agency Act," approved April 6, 1972 (Ga. L. 1972, p. 1140), or authorized to do business in this state pursuant to Article 5 of this chapter; or

(F) A licensee under Article 4 or Article 4A of this chapter and such other persons as may be engaged in the business of:

(i) Cashing checks for a fee; or

(ii) Performing transactions by wire or other electronic means to facilitate the movement or transfer of money.

(7) "Knowing that the moneys involved in a currency transaction represent the proceeds of some form of unlawful activity" means that the person knew the moneys involved in the transaction represented proceeds from some form, although not necessarily which form, of activity that constitutes a felony under this Code.

(8) "Monetary instruments" means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery.

(9) "Person" means natural persons, partnerships, trusts, estates, associations, corporations, and all entities cognizable as legal personalities.

(10) "Specified unlawful activity" means any act or activity constituting an offense punishable as a felony pursuant to the laws of this state or any act or acts constituting a pattern of racketeering activity as that term is defined in Code [Section 16-14-3](#).

(11) "Transaction" includes:

(A) A purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition and, with respect to a financial institution, includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected; or

(B) The movement of funds by wire or other means or involving one or more monetary instruments or the use of a financial institution.

(Code 1981, 7-1-911, enacted by Ga. L. 1982, p. 2219, 1; Ga. L. 1986, p. 214, 1; Ga. L. 1989, p. 1211, 17; Ga. L. 1990, p. 362, 2; Ga. L. 2004, p. 458, 9.)

7-1-912. Records and reports of certain currency transactions; regulations; commissioner's authority under Code Section 7-1-64; prohibited acts; definitions.

(a)(1) Financial institutions and other money service businesses are required by state law to comply with the filing, reporting, and record-keeping requirements provided for in federal law. The department may promulgate regulations that specify additional requirements for currency transaction reports, record keeping, and suspicious activity reports.

(2) Pursuant to federal law, a financial institution must keep a record of any currency transaction deemed suspicious for any reason, including transactions where money laundering is suspected, and file a report of such transaction with the appropriate federal authority. All such suspicious activity reports shall be simultaneously filed with the department, unless by regulation the department deems a federal filing to be adequate.

(3) The provisions of paragraph (1) of this subsection shall not apply to transfers between banks, credit unions, or savings and loan associations chartered under the laws of any state or the United States which do not involve the payment or receipt of currency and which are accomplished through a wire or electronic transfer system operated by the Federal Reserve System, the Federal Home Loan Bank System, or other governmental agency or instrumentality; provided, however, with regard to each such transfer the bank, credit union, or savings and loan association shall maintain a record of the name, address, and tax identification number of its customer, the name and location of the corresponding bank, credit union, or savings and loan association, and the name of the customer of the corresponding bank, credit union, or savings and loan association.

(b) The commissioner shall prescribe such regulations as he may deem appropriate to carry out the purposes of this article. Such regulations shall to the extent feasible be consistent with federal regulations and may provide for exemption of such transactions as the commissioner determines are clearly of a legitimate nature for which mandatory reporting would serve no useful purpose. The regulations shall provide for adequate safeguards against unauthorized currency transactions or transactions otherwise inconsistent with this article.

(c) The commissioner in his discretion may exercise the authority granted in Code [Section 7-1-64](#) to assure that financial institutions subject to this article are in compliance herewith.

(d) No person shall for the purpose of evading the reporting requirements of this Code section:

(1) Cause or attempt to cause a financial institution to fail to file a report required pursuant to this Code section;

(2) Cause or attempt to cause a financial institution to file a report required pursuant to this Code section that contains a material omission or misstatement of fact; or

(3) Structure or assist in structuring or attempt to structure or assist in structuring any currency transaction with one or more financial institutions.

(e) For purposes of this Code section, the term:

(1) "Material omission or misstatement" shall include the furnishing of a false or erroneous name, address, taxpayer identification number, and business, profession, or occupation for the person performing the currency transaction or the beneficiary of such transaction or displaying or otherwise producing physical proof of identity on such persons which is forged, falsified, or otherwise altered; and

(2) "Structuring" of a currency transaction means the division of a transaction which would otherwise be reportable under this Code section into two or more transactions which if considered separately would not be reportable.

(Code 1981, 7-1-912, enacted by Ga. L. 1982, p. 2219, 1; Ga. L. 1986, p. 214, 2; Ga. L. 1989, p. 1211, 18; Ga. L. 1990, p. 362, 3; Ga. L. 1993, p. 917, 9; Ga. L. 1994, p. 1780, 6; Ga. L. 1996, p. 848, 12; Ga. L. 1997, p. 485, 28; Ga. L. 2004, p. 458, 10.)

The 2004 amendment, effective July 1, 2004, in paragraph (a)(1), substituted the present first sentence for the former first sentence which read: "Every financial institution shall keep a record of currency transactions in excess of \$10,000.00 and shall comply with federal law as to their filing.", and inserted ", record keeping," near the end of the second sentence.

Code Commission notes. - Pursuant to Code [Section 28-9-5](#), in 1997, a comma was inserted following "federal law" in the first sentence of paragraph (a)(2).

Law reviews. - For note on 1990 amendment of this Code section, see 7 Ga. St. U.L. Rev. 201 (1990).

7-1-913. Access to reports.

The Georgia Bureau of Investigation and the Department of Revenue shall have access to and shall be authorized to inspect and copy any reports filed with the department pursuant to this article. In addition, unless prohibited by federal law or by any agreements with federal authorities, the Georgia Bureau of Investigation and the Department of Revenue shall have access to and shall be authorized to inspect and copy any currency transaction report information received by the department from federal authorities.

(Code 1981, 7-1-913, enacted by Ga. L. 1982, p. 2219, 1; Ga. L. 1994, p. 1780, 7.)

7-1-914. Civil penalties; action for recovery; penalty.

(a) For each willful violation of this article, the commissioner may assess upon any financial institution and upon any director, officer, or employee thereof who willfully participates in the violation a civil penalty not exceeding \$1,000.00.

(b) In the event of the failure of any person to pay any penalty assessed under this Code section, a civil action for recovery thereof may, in the discretion of the commissioner, be brought in the name of the State of Georgia.

(c) Whoever conducts or attempts to conduct a transaction described in subsection (c) of Code [Section 7-1-915](#) is liable to the State of Georgia for a civil penalty of not more than the amount of the funds involved in the transaction or \$10,000.00, whichever is greater.

(Code 1981, 7-1-914, enacted by Ga. L. 1982, p. 2219, 1; Ga. L. 1989, p. 1211, 19.)

7-1-915. Criminal penalties; penalties imposed by other Code sections not superseded.

(a) Except as provided in subsection (b) of this Code section, whoever willfully violates any provision of this article shall be guilty of a misdemeanor.

(b) Whoever willfully violates any provision of this article where the violation is:

(1) Committed in furtherance of the commission of any other violation of Georgia law; or

(2) Committed as part of a pattern of illegal activity involving transactions exceeding \$100,000.00 in any 12 month period

shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than \$500,000.00 or by imprisonment for not more than five years, or both.

(c) Whoever, knowing that the moneys involved in a currency transaction represent the proceeds of some form of unlawful activity, conducts or attempts to conduct such a transaction which in fact involves the proceeds of specified unlawful activity:

(1) With the intent to promote the carrying on of specified unlawful activity; or

(2) Knowing that the transaction is designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or to avoid a transaction reporting requirement under this article

shall be sentenced to a fine of not more than \$500,000.00 or twice the amount involved in the transaction, whichever is greater, or imprisonment for not more than 20 years, or both.

(d) Nothing in subsection (c) of this Code section nor in subsection (c) of Code [Section 7-1-914](#) shall supersede any provision of law imposing criminal or civil penalties or affording civil remedies in addition to those provided for in this Code section or in Code [Section 7-1-914](#).

(Code 1981, 7-1-915, enacted by Ga. L. 1982, p. 2219, 1; Ga. L. 1983, p. 3, 5; Ga. L. 1989, p. 1211, 20.)

7-1-916. Forfeiture of property involved in illegal transactions.

All property of every kind used or intended for use in the course of, derived from, or realized through a transaction which in fact involves the proceeds of unlawful activity specified in [Chapter 14 of Title 16](#) or otherwise subject to the provisions of this article shall be subject to forfeiture to the state. Forfeiture shall be had by the same procedure as is set forth in Code [Section 16-14-7](#).

(Code 1981, 7-1-916, enacted by Ga. L. 1989, p. 1211, 21.)